

Dispute Resolution/Consensus Building

Are different factions within your community fighting one another?
Are public officials unable to make decisions on a critical public issue, such as siting highways?
Is your community entangled in costly lawsuits?
Is your community facing a controversial policy or resource allocation decision?
If so, you may want to consider using dispute resolution.

What Is It?

Dispute resolution and consensus building processes have been used successfully to resolve many public disputes. The major stakeholders in a particular dispute voluntarily negotiate an agreement that will serve all their interests, sometimes with the help of a neutral intermediary.

Why Use It?

- Remove a major obstacle to community development
- Avoid costly and time consuming lawsuits
- Achieve more stable and satisfactory outcomes for all stakeholders
- Deal with differences effectively and constructively

Different Forms of Dispute Resolution

Unassisted: Unassisted negotiation does not involve an intermediary. This form of dispute resolution is most appropriate if: 1) the issues and stakeholders are few and readily identifiable, 2) the stakeholders can establish communication that allows for joint problem solving, and 3) moderately high uncertainty about the outcome of unilateral action exists for all stakeholders.

Facilitation: The simplest form of assisted negotiation involves a facilitator, who focuses on the process, as opposed to the substance of the negotiation. Facilitators will rarely volunteer ideas; rather, they try to foster a climate conducive to problem solving. All parties jointly select the facilitator, but any one can "fire" him or her. Facilitation is most useful when the disputing parties need some assistance, but want it limited to focusing or moderating their discussions.

Mediation: In mediation, the intermediary engages in the substance of the dispute and must be knowledgeable about it. At the start of the negotiation, the parties meet privately with the mediator. The mediator then understands what room for negotiating exists and attempts to bring the parties closer to agreement. Mediation is valuable where the parties have become "hardened" in their public positions and need help in exploring options.

Arbitration: In arbitration the stakeholders control the design of the process and approve the outcome, but the intermediary is more involved in devising solutions. After listening to all sides the arbitrator suggests a solution that the parties accept or reject. Arbitration can be binding or nonbinding, but the former is rarely used in public disputes.

How to Begin

1. Convene the negotiation: Contact all the stakeholders and suggest that they meet and talk. An outsider with no direct stake in the outcome may be the best person to do this. The initial meeting should involve no commitments.

2. Identify stakeholders: Determine which groups should be represented and who can speak for them. It is always better to include too many, rather than too few groups, at the outset. A stand-in may be sought for groups that are not organized.

3. Select an intermediary: Disputants may decide to call in an intermediary at the beginning, or later if unassisted negotiations fail. The intermediary must be acceptable to all parties, and his or her role must be well defined. The disputants should decide what skills, styles and level of involvement they seek from an intermediary.

4. Set ground rules and the agenda: The parties must decide procedural issues of how they will work together, and what they will discuss. All major concerns should be considered potential agenda items. These concerns can then be clustered to bring the agenda to a manageable size.

5. Joint fact finding: To sort out fact from fiction, the parties must jointly determine what they do and do not know about the issues, experiences, and contexts relevant to the dispute.

6. Invent options: Next, the parties develop options for each agenda item. The brainstorming process works best if parties do not feel locked in to the options they suggest. To increase the chances of a satisfactory agreement, they should "focus on interests, not positions." This involves outlining their concerns, rather than insisting upon a particular outcome.

7. Package the options: Each party will value and prioritize the options differently. During negotiations, they try to determine how other parties value the options. By packaging and trading options, they attempt to reach a mutually satisfactory agreement.

8. Prepare a written agreement: The final agreement should be written to ensure that all parties have the same understanding of the outcome. They can then take back the same information to their respective constituencies. The document should also specify performance measures--and how they will enforce the agreement.

Additional Resources

- State offices of mediation
- Society for Professionals in Dispute Resolution
- *Getting to Yes*, by Roger Fisher and William Ury
- *Breaking the Impasse*, by Lawrence Susskind and Jeffrey Cruikshank

Additional copies are available from the Office of Community Development, U.S. Department of Agriculture, Rural Development, Room 701, 300 7th Street, S.W., Washington, DC 20024 (1-800-645-4712). Copies may also be obtained at

<http://www.rurdev.usda.gov/ocd>