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Defusing Disputes Without Litigation Conflict resolution can take many forms, but a holistic approach may work best

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In today's low-interest-rate environment where cash is plentiful for commercial real estate investment, fewer disputes are finding their way into the courts.

Nonetheless, conflicts always will plague commercial real estate deals, sapping time and money from dealmakers.

Perhaps no one knows that better than Michael Cohen. His Los Angeles firm, **M.A. Cohen & Co.**, has resolved \$2.7 billion in commercial real estate disputes and he has facilitated \$1 billion in commercial real estate sales and loans.

In conflict resolution, the traditional options for settling disputes include litigation, mediation and arbitration.

Cohen, however, claims that the method he has developed is unique.

What sets his approach apart, he said, is a "holistic" approach to resolving disputes where he incorporates his experience in real estate, finance and law to bring about an amicable settlement.

His firm's strength, Cohen said, comes from his ability to settle deals that seem impossible to resolve.

"I've had people say, 'You're never going to settle this, we have tried mediation and it failed,'" he said. "My process has been able to resolve their dispute."

Comparing Methods

Even this is subject to dispute, however.

Other legal experts working in the dispute-resolution industry say that this type of approach has been used for years and the traditional methods will remain the primary options for dispute resolution.

Negotiator Ron Kelly of Oakland-based **Ron Kelly Mediator/Arbitrator**, said that the method of resolution depends on what sort of relationship the parties hope to maintain after settling their dispute.

If the disagreement involves a tenant and a landlord who would like to maintain a relationship

after the agreement, he said, mediation would best solve the conflict.

Kelly said mediation results in a binding, legal settlement 95 percent of the time. The benefits to parties in mediation, he added, are that they have control of the outcome of the resolution and that the method works quicker than arbitration or litigation.

"I think it's far superior to any other method," he said.

For other deals, arbitration may be in order, Kelly said.

For instance, in a "walk-away deal," such as a deal in which one party is unhappy with a building purchased from another party, the players have less motivation to maintain a relationship after settling. Arbitration or litigation may be more suitable for this conflict type, he said.

John S. Preston, of the Law Offices of John S. Preston in Oakland, said the flexibility of mediations makes the method better than arbitration.

Preston said that both parties can agree to the structure of the resolution in mediations. In arbitration, meanwhile, the arbitrator makes a decision that is beyond the control of those involved.

Cohen's method, meanwhile, differs from the traditional methods of arbitration and mediation.

For any dispute, Cohen said, paying close attention to details can lead to a mutually beneficial resolution for the involved parties.

"I take the time to understand all of the aspects of the dispute," Cohen said. As a dispute develops, communication between the decision makers for the two parties often disintegrates. Their lawyers enter, taking aggressive positions, and the situation fails to facilitate a quick decision, Cohen said.

"They often aren't talking or have reached an impasse," he said. "It's not conducive to resolution."

Cohen's involvement begins when one of the involved parties hires his firm. After learning the intricacies of the particular deal, he contacts the head of the second involved party.

"The key to a process is to establish credibility with all the parties," Cohen said.

While the initial reaction from the second party ranges from hesitancy to skepticism, Cohen said he engages them in his process. In 16 years, Cohen said, he has never failed to restart communication between the parties in dispute.

He said that the second party has nothing to lose in the process because, if the two parties don't agree to the deal facilitated by Cohen, the deal does not occur. Only when both parties find satisfaction in his resolution will a deal become finalized, he said.

At the conclusion of litigation, he said, one party often will be satisfied with the decision while the other party will find itself empty handed. His method results in a deal that satisfies all parties, Cohen said.

"If the parties are concerned about the uncertainty of a potential adverse judicial decision, this process acts as a hedge against that risk," he said

While other resolution experts say Cohen's record impresses them, they refute the notion that his service is unique.

"I did the same thing 25 years ago," Kelly said.

Whether or not Cohen's approach is original, his clients say his work helped resolve nasty conflicts that seemed unsolvable.

"He's nothing short of phenomenal," said Pat Nesbit, chairman and chief executive officer of **Windsor Capital Group Inc.**, which owns and develops commercial properties.

Nesbit recalled a deal involving nine hotels that his firm and Kemper Insurance undertook together. After various acquisitions and takeovers, a conflict arose over Windsor Capital's right of first refusal for the nine hotels.

He said millions of dollars were spent in preparation for litigation. Weeks before the trial began, Windsor Capital called in Cohen & Co.

"Within two weeks," Nesbit said, "Michael Cohen had the whole thing solved. He's a great advocate. He knows how to cut through the nuts and bolts and bring resolution. He's a rare talent."