



SOLVING CONFLICTS IN MULTI-UNIT BUILDING RENOVATION: THE ROLE OF MEDIATION AND ADR SYSTEMS

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Abstract: The purpose of this paper is to show how mediation and other alternative dispute resolution (ADR) methods can assist in resolving interpersonal conflicts that arise in multi-unit buildings, particularly those related to minor or major renovation projects, as well as present some successful experiences in this context. The goal of ADR methods is to facilitate a consensus, a satisfactory agreement among homeowners for their multi-unit building ecological transition.

Title: Solving Conflicts in Multi-Unit Building Renovation: The Role of Mediation and ADR Systems.

Keywords: multi-unit buildings, renovation, ecological transition, ADR systems, mediation, collaborating negotiation, neutral evaluation.

Resumen: El objetivo de este artículo es mostrar cómo la mediación y otros métodos alternativos de resolución de disputas (ADR) pueden ayudar a resolver los conflictos interpersonales que surgen en comunidades de propietarios, especialmente aquellos relacionados con proyectos de renovación de mayor o menor relevancia del edificio, así como presentar algunas experiencias de éxito en ese contexto. El objetivo de los métodos ADR es facilitar un consenso, un acuerdo satisfactorio de los propietarios para la transición ecológica del edificio.

Título: Resolución de conflictos en la renovación de edificios en régimen de propiedad horizontal: el papel de los sistemas de mediación y ADR.

Palabras clave: edificios, propiedad horizontal, renovación, transición ecológica, sistemas ADR, mediación, negociación colaboradora, evaluación neutral.

Resum: L'objectiu d'aquest article és mostrar com la mediació i altres mètodes alternatius de resolució de disputes (ADR) poden ajudar a resoldre els conflictes interpersonals que sorgeixen en comunitats de propietaris, especialment aquells relacionats amb projectes de renovació de l'edifici de major o menor transcendència, així com presentar algunes experiències d'èxit en aquest context. L'objectiu dels mètodes ADR és facilitar un consens, un acord satisfactori dels propietaris per a la transició ecològica de l'edifici.

Títol: Resolució de conflictes en la renovació d'edificis en règim de propietat horitzontal: el paper dels sistemes de mediació i ADR.

Paraules clau: edificis, propietat horitzontal, renovació, transició ecològica, sistemes ADR, mediació, negociació col·laboradora, avaluació neutral.

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1. INTRODUCTION

As part of the efforts to combat climate change, promote ecological transition, and fight energy poverty, the European Union (EU) has proposed several actions in line with the United Nations Sustainable Development Goal no.7. One action is the promotion of building renovation, as buildings account for roughly 40% of the EU's total energy consumption, and 36% of greenhouse gas emissions come from energy use. This renovation program sponsored by the EU extends to both public and private buildings, including multi-unit residential and commercial properties. However, renovating private multi-unit buildings requires the agreement of owners, which can make the process more complex.

The purpose of this paper is to demonstrate how mediation and other alternative dispute resolution (ADR) methods can assist in resolving interpersonal conflicts that arise in multi-unit buildings, particularly those related to minor or major renovation projects. Their goal is to facilitate a consensus, a satisfactory agreement among owners or, even, between landlord and tenant.

2. AN OWNERS' AGREEMENT IS NEEDED FOR RENOVATION IN MULTI-UNIT BUILDING

The building renovation requires an owners' agreement in a multi-unit building. A Spanish Royal Decree, October 5th 2021, which regulates the aid programs in the field of residential rehabilitation and social housing,¹ on one side, and laws governing multi-unit buildings (both Catalan and Spanish), on the other side, establish the regime of owners' agreements to renovate for energy efficiency purposes.

¹ Royal Decree 853/2021, of October 5, which regulates the aid programs in the field of residential rehabilitation and social housing of the recovery, transformation and resilience plan. It establishes this agreement in its article 32. d) 2nd; article 35. 10. g) and article 54.6. h). The Spanish version can be read at <https://www.boe.es/buscar/pdf/2021/BOE-A-2021-16233-consolidado.pdf> [Consultation: 15 November 2023]

A simple majority is required for the adoption of agreements related to the renovation for the energy efficiency of buildings under community of owners. This is the case in Catalan legislation (art. 553-25, sections b), d), e, f) Catalan civil code) and in a similar sense in Spanish state legislation (art. 17, point 2, last paragraph of the Horizontal Property Act of 1960) with the limits of the cost in relation to the annual expenses of the community of owners (ANDERSON, 2023b). Under the Spanish regulation, it is not clear whether the simple majority is on the total quotas or on those present at the meeting. In the Catalan Civil Code, it seems that it is necessary to understand that it is on those present. The lack of certainty regarding these issues does not help either (ANDERSON, 2023b).

A simple-majority agreement means that there is a dissident minority. As it is well known, an agreement is binding for owners who do not agree with it (ANDERSON, 2023a), but if they don't agree with the decision, the possibility and risk of a breach of agreement increase, along with the consequences of this breach.

If the goal is a stable and lasting agreement beyond that simple majority, it would be ideal to reach a consensus. In consensus, there is no dissent. There may not be an active consent of each one, but rather an acceptance in the sense of non-denial or, if it is the case, a common denial based on solid reasons that have been discussed.

3. REACHING A *CONSENSUS*

The million dollars question: how do multi-unit buildings reach this consensus for a stable and lasting agreement in order to achieve renovation?

Behind each owner's vote, behind each declaration of will for or against any change or renovation in the building, there are interests and needs, mainly economic, that will determine the owner's decision. Undoubtedly, the cost of the work, which will mean the payment of a sum of money for each owner, can be one of the main obstacles, in particular, for those economically vulnerable but also for those who had a different life plan (for instance, a person have just bought the unit with mortgage loan that may represent a high percentage of their income and this extra payment because of the renovation is considered excessive; a couple that is going to have children or a retired person with a reduced pension; an unemployed family) (ANDERSON, 2023a). Furthermore, complexity of the application process for grants and subsidies, certainly, makes it difficult to access funds available to cover part or the whole cost. Besides that, interpersonal conflicts among owners can arise in these owner's meetings for the building renovation.

Other elements also come into play in this decision-making process are: 1. Information about the renovation; 2. Interpersonal relationships among owners, families, tenants who live in each unit; 3. Decision-making process itself.

3.1. Information about the renovation

Information about the condition of the building and renovation proposals must be clear and understandable to owners of each unit (homes or commercial units). It must respond to each and every one of the concerns and doubts that the owners and their families may have. Specific information that affects their daily life at home, such as how much money it will cost, how it can be financed, how long the works will last, and what effects the works will produce, must be provided. The willingness to resolve doubts, take into consideration, and respect the fears, anxieties, and stress that a refurbishment, especially one of a certain magnitude, can generate is crucial. In order to provide duly informed consent on architectural, renovation and retrofit issues, each person involved must feel heard and recognized in the proposed solution for this desired consensus.

3.2. Interpersonal relationships

It is said that each person and each family is a world, with its values, its beliefs, its motivations, its dynamics. A community of owners is a world too. Past and present interpersonal relationships will be revealed in this decision-making process towards building renovation. Disparate personal, family and economic situations will show a range of differences that must be managed, to try and take them into account if what is sought is a satisfactory, lasting agreement that is fulfilled.

3.3. Decision-making process

The decision-making process itself can be a conflict element. As in any conflict situation, this can be dealt with in different styles. According to Thomas and Kilmann Conflict Mode Instrument (THOMAS – KILMANN, 1977), there are 5 ways to face the conflict due to two parameters: cooperativeness (taking someone's concerns into account), and assertiveness (taking own concerns into account). These 5 conflict-handling modes are competing, avoiding, accommodating, compromising and collaborating. Among them, collaborating is both assertive and cooperative. Collaborating involves an attempt to work with others to find some solution that fully satisfies their concerns. It means delving into an issue to pinpoint the underlying needs and wants of the individuals involved. The collaborative style is the one that favors a satisfactory agreement, as it includes the needs of the people who have participated in this process actively, leading to a lasting settlement that encourages compliance with the agreed-upon terms.²

² As GRANT points out, research has revealed that effective negotiators are those who operate altruistically (*othership*), who have a "prosocial" motivation. Ineffective negotiators are those who solely act as receivers and those altruistic donors (who give everything without thinking about their personal interests) (GRANT, 2013). According to the studies based on the competition-cooperation theory (DEUTSCH, 2006) and the theory of the «double concern» (PRUITT and RUBIN, 1986) people who only expect to receive (receivers) perceive negotiations as competitions where one person wins and the others lose and, consequently, do not trust the other parties to the negotiation, they bargain aggressively, they overlook opportunities to understand the other party's interests and therefore do not consider them as able to generate value. On the other hand, people who give a lot, altruistically, they make too many concessions, benefit the other

4. ADR SYSTEMS FOR CONSENSUS

Again, the question is how to reach a consensus considering all these different interests and needs.

My approach to this context is holistic. There is the law, as a way of solving conflict, and we are going to focus on other ways of facing conflicts, such as ADR systems. Taking these factors into account (information, interpersonal relationships and the decision-making process), and given the uncertainty, the instability that a simple majority can cause in the community of owners, we propose resorting to some ADR mechanisms that favor an agreement of owners that is lasting and satisfactory: integrative negotiation, mediation (in its double modality, facilitative and evaluative) and neutral evaluation.

ADR systems are well known, as alternative procedures to litigation. Included in this category there are “heterocompositive” processes in which a third party decides the result of this conflict based on his/her equity within the law (as arbitration) and “autocompositive” ones, in which the solution is the result of a parties’ agreement, with³ or without a third professional (as negotiation, mediation, and others).⁴ Arbitration is another adjudicative system similar to the judicial proceeding so it falls short of attaining the consensus required in a multi-unit building. Therefore, the focus will be in those ADR systems that help in promoting a settlement based on a consensus, such as collaborative negotiation, mediation in both modalities -facilitative and evaluative- and neutral evaluation.

4.1. Collaborative negotiation

Collaborative negotiation is identified with the traditional integrative negotiation (DE DREU, C. K., WEINGART, L. R S. KWON, 2000) that has been developed in the Program on Negotiation at the University of Harvard. Created in the 80’s last century by Roger Fisher, William Ury and, in the 2nd edition, written with Bruce Patton,⁵ it is built on principles that aim for a win-win outcome. These principles include learning how to handle perceptions and emotions, finding out what is beneath a position, creating multiple

party and sacrifice their own personal interests in benefit of the other party. Altruistic negotiators, on the other hand, who take their own personal interests into account and also the interests of the other party, they are people who search opportunities to benefit themselves and others as well. They are able to think in complex ways and to identify solutions in which all parties satisfy their interests, generate value and when they start distributing the cake, it's big enough for everyone, including themselves. Therefore, they give more and also receive more.

³ The intervention of a third party is “*inter partes*” which means helping parties to achieve an agreement by themselves (BARONA VILAR, 2011).

⁴ These concepts (autocompositive and heterocompositive) are due to the Italian professor, Francesco CARNELUTTI (1960).

⁵ FISHER, R., URY, R., PATTON, B. (1991).

options, reaching outcomes based on objective criteria, and identifying the best alternative to a negotiated agreement (BATNA).

Those are principles for what has been traditionally designated as integrative (versus the traditional distributive) negotiation. Integrative negotiation can be concreted in seven elements related to a successful agreement (WEISS, 2016): “1) it satisfies everyone’s core interests (yours and theirs); 2) is the best of many options; 3) meets legitimate, fair standards; 4) is better than your alternatives; 5) is comprised of clear, realistic commitments; 6) is the result of effective communication; 7) helps build the kind of relationship you want”.

In the context of multi-unit renovation, collaborative negotiation could be carried out by owners of each unit, by themselves or by their representatives, usually attorneys.

4.2. Mediation

When emotions or some interpersonal conflicts among owners arise and communication is difficult, mediation is a process in which a third party leads a dialogue among conflicting parties, with the goal of helping them understand each other’s perspectives, positions, interests, and needs. It is a voluntary process where parties attempt to reach an agreement on the settlement of their dispute with the assistance of a mediator. Mediation is versatile, confidential, and communicative, effectively managing situations involving vulnerable people or conflicts arising from misunderstandings and poor relationships among owners in multi-unit buildings or between owners and tenants.

Directive 2008/52/EC of the European Parliament and of the Council of 21 May 2008 on certain aspects of mediation in civil and commercial matters⁶ defines mediation as a “structured process, however named or referred to, whereby two or more parties to a dispute attempt by themselves, on a voluntary basis, to reach an agreement on the settlement of their dispute with the assistance of a mediator” (article 3, a). The mediator works in managing interpersonal⁷ disputes among them all, mapping the conflict, specially, about persons, problems and process (LEDERACH, 1992). For instance, the persons directly or indirectly involved, emotions,⁸ communication among them, situations of power, their beliefs, their religion, their cultural values, vulnerable situations and so on. A mediator is an expert in negotiation but also in communication,

⁶ https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=uriserv%3AOJ.L_.2008.136.01.0003.01.ENG

⁷ We agree with VILALTA (2009) in that “the authentic resolution of a conflict must happen, most of the time, through the elimination or purging of the triggering factors, which implies, when it comes to personal relationships, regenerating social relationships and regaining people's trust involved and affected, aspects that a formal judicial process is not capable of carrying out”.

⁸ “(...) often, dealing more directly with feelings enables you to get to the heart of the matter more quickly – and with a better chance of finding a satisfying resolution” STONE, D., PATTON, B., & HEEN, S. (2010).

in nonviolent communication and active listening and helps everyone feel appreciation, affiliation, autonomy, status and role in this process.

The professional uses different technics that will help to create a space for improving interpersonal relationships. Different models of mediation may be used in every single case, e.g., transformative and restorative practices when needed. The mediator can help owners of each unit identify the best and worst alternatives to a negotiated agreement (BATNA/WATNA) in private sessions.

Traditionally, mediation is facilitative, which means that it is a dialogue process among multi-unit building owners, or between owner and tenant, that attempt by themselves to reach an agreement. In this model, the mediator does not give any proposal or advise. The mediator just develops the process until those concerned reach (or not) their own agreements.

In addition to facilitative mediation, there is also evaluative mediation which involves a conflict mediator who not only conducts the process but also provides an opinion or proposal (RISKIN, 1996) that the conflicting parties may consider, if they choose to do so (BARUCH BUSH, 2002). This mediator is typically an expert in the field of the conflict.

Mediation is a process that helps create a tailored solution for every multi-unit building at a precise moment with specific individuals. It avoids destructive confrontation, building solutions after a process in which everyone has had the opportunity to explain interests and needs. The result is a stable and lasting agreement reached without pressure, with interests and needs included in the agreement.

4.3. Neutral evaluation

Likewise, the neutral evaluation is another ADR process that can be used to resolve disputes. This non-binding process involves an independent evaluator who assesses the key facts and legal issues of a case, including an estimate of the likely outcome and a possible agreement between the parties involved. Typically, the evaluator is an expert or professional in a specific field, such as law, construction, materials, etc. It is particularly effective when the parties have reached an impasse on scientific or technical problems in a context that the neutral evaluator has this especial expertise. They will offer a solution to the problem that the conflicting parties may or may not accept. Neutral fact-finding has also been used in contractual agreements.

In some cases, it is difficult to see the difference among some of these ADR systems because the expert role may be so similar. Architects are efficiently working in renovation buildings, contacting with homeowners in multi-unit buildings, assessing them about the technical possibilities they can choose for this ecological transition in a process of neutral evaluation, giving its professional non-binding opinion and they also act as mediators, managing interpersonal conflicts and helping community of owners in multi-unit renovation. A conceptual clarification among them all is absolutely needed.

ADR systems for consensus are flexible, they adapt to each set of people, conflict, situation and moment in time versus determinative methods in which a third person decides the conflict with a resolution that is not always satisfactory for one's party's interests.⁹

These are not miraculous processes. They depend on people's willingness, at the beginning, during the process and finding constructive solutions at the end of it. Owners can decide whether to participate or not in the selected ADR process, to work in a collaborative negotiation or on mediation, as mentioned before.

Those processes also take owners' time. Time for creating confidence among them in negotiation and working on different alternatives. In mediation, time for caucus (a confidential, private meeting held by the mediator with individual parties¹⁰ or a brief private meeting of a negotiation team conducted during bargaining) and time for joint sessions with owners. However, they can be quicker than a determinative or adjudicative system (litigation in court, mainly). It can be an effort for parties. Instead of giving the decision, the solution, to a third party who decides the result of this conflict, in these "autocompositive" ADR systems, each party has to actively participate in the process.

5. ADR EXPERIENCES IN MULTI-UNIT BUILDING RENOVATION.

The aim of this presentation was not only to present a theoretical approach to ADR systems in multi-unit buildings but also to include positive examples of successful ADR experiences in multi-unit building renovation.

The first example is from Bilbao, Spain, where mediation was used for managing interpersonal conflicts in 41 multi-unit buildings that needed repair in the ancient neighborhood up to the beginning of 2018.¹¹

⁹ As an example, see different types of dispute resolution methods from consensual (negotiation [by parties personally], mediation [purely facilitative], negotiation [through representatives], collaboration and collaborative practice, mini-trial [executive Tribunal], neutral fact-finding expert, evaluation [early neutral evaluation]) to determinative processes (Litigation, private judging, administrative or statutory tribunals, arbitration, expert determination, adjudication, dispute board, court-annexed arbitration). Among consensual and determinative processes, there are the Ombudsman, Arb-med, med-arb, mentioned as examples (HARRIS, 2020) among others. A new negotiation strategy was proposed by BAZERMAN and KAHNEMAN (2019): final-offer arbitration challenge. "The problem: two sides in an adversarial negotiation rarely bring their most reasonable offers to the table. Rather, each stakes out a position to its advantage and seeks to give up as little as possible. This common approach is often costly to all involved. The solution: A new negotiation strategy can efficiently lead to an equitable agreement: One side presents an objectively fair offer, challenging the other to make its own best offer and then allow an arbitrator to decide which of the two is more reasonable". See it in BAZERMAN, M. H.; KAHNEMAN, D. (2019) How to make the other side play fair, *Harvard Business Review Press*, Printed 2022, p. 117.

¹⁰ This caucus may help as well for empowering one party for future sessions with all the parties. W. URY (2015).

SURBISA, the company that offers this service, uses mediation to promote coexistence by facilitating communication, dialogue, and peaceful management of differences, incidents, and conflicts.¹²

In Italy, social mediation activities helped people from two deteriorated slums (Fondo Saccà and Fondo Fucile) in Messina to counteract mechanisms of distrust and resignation. A participatory approach involving public assemblies, meetings, and one-to-one integrated social and technical tutoring of households (LEONE, GIUNTA, MERINO *et alii*, 2023) contributed to the success of the Capacity Project, which took place from 2017 to 2022.¹³

Another experience involved both mediation¹⁴ and expert evaluation¹⁵ to resolve a problem in a building located in Merinals, a neighborhood of Sabadell, near Barcelona. The architects' study showed that the building did not have aluminosis and could be rehabilitated.

The "Dear house, dear neighborhood" program¹⁶, offered by the Barcelona Metropolitan Area Housing Consortium, a public entity constituted by the Autonomous Government of Catalonia and Barcelona Metropolitan Area entity, started in 2021. It is born for multi-unit rehabilitation and there is a mediator among different professionals. The community decides how far they want to rehabilitate, participating in a monitoring commission that reviews the progress monthly with those responsible for the works project. The Consortium takes care of permits, finds construction companies, and offers payment facilities for homeowners. So far, there have been 9 projects in 4 cities close to

¹¹ See this article in a newspaper at <https://www.deia.eus/bilbao/2018/03/08/mediacion-profesional-desbloquea-conflictos-vecinales-4879282.html> [Consultation: november 2023]. "Neighbors who do not pay due to insolvency, communities with a significant degree of empty housing, coexistence problems and situations of helplessness due to loneliness that paralyzes them when making decisions. These are some of the causes that can influence a building to deteriorate little by little due to lack of commitment when carrying out the necessary work. To solve it, Surbisa thought ten years ago about providing a solution that involves a mediator, a property manager specifically, in the homes in its area. Their objective: to mediate these conflicts. The positive result has been so important that it has encouraged us to revalidate this program in Bilbao La Vieja and it has been extended to Atxuri and all areas of action of this society".

¹² See this information at SURBISA's website, in Spanish. <https://www.surbisa.eus/servicios/acuerdos-en-tu-comunidad/> [Consultation: 15 November 2023].

¹³ See it <https://www.revesnetwork.eu/2017/12/22/urban-regeneration-processes-as-opportunity-for-human-emancipation-the-capacity-project-in-messina/> [Consultation: 15 November 2023].

¹⁴ Mediation did not finish with an agreement. See it <https://www.diaridesabadell.com/2019/06/21/els-merinals-i-habitatge-sense-mediacio/>

¹⁵ See it <https://www.arquitectesexperts.com/editorial/el-dictamen-pericial-proposa-la-rehabilitaci-dels-habitatges-de-merinals922021> [Consultation: november 2023].

¹⁶ See it at its homepage. <https://www.cmh.cat/web/cmh/actualitat/estimada-casa-querido-barrio>

Barcelona (Santa Coloma de Gramenet, Cornellà, L'Hospitalet de Llobregat and Badalona)¹⁷.

Among different duties, owners have to interact with a mediator who will explain the program in detail, who will give the authorizations that must be signed by them, so that this professional will keep neighbors informed, and who will process the subsidy. Furthermore, the mediator may manage disagreements between neighbors and listen their interests and needs in every step of the renovation process.

Personal and economic situations are diverse for every homeowner. This is the reason why the "Dear house, dear neighborhood" program presents formulas designed for each case and payment facilities so that everyone can assume it with ease and comfort. It could be a long-lasting installment (180 monthly installments in 15 years), without interest. In the aim of reducing conflicts, the Consortium will collect the installments directly. Homeowners start paying when the works on the building are finished.

6. CONCLUDING REMARKS

The process of renovating multi-unit buildings involves various complexities, including legal requirements, diverse interests, economic considerations, and interpersonal conflicts among owners. Achieving a consensus for renovation is crucial for sustainable and lasting agreements that contribute to broader goals such as combating climate change, promoting ecological transition, and fighting energy poverty or simply save on utility bills and enjoy a healthier household office.

This paper has explored the role of mediation and alternative dispute resolution (ADR) systems in addressing conflicts related to multi-unit building renovation. Collaborative negotiation, mediation (both facilitative and evaluative), and neutral evaluation are presented as tools to navigate the challenges of decision-making, interpersonal relationships, and information dissemination in the context of renovation projects.

Successful ADR experiences in various locations, including Bilbao and Messina, demonstrate the effectiveness of these processes in promoting coexistence, managing conflicts, and facilitating community-driven renovation initiatives. The "Dear house, dear neighborhood" program in Barcelona further illustrates how mediation, coupled with community involvement and transparent processes, can lead to successful multi-unit building renovations.

Finally, the holistic approach to conflict resolution presented in this paper emphasizes the importance of understanding the diverse needs and interests of owners,

¹⁷ These documents can be read at homepage. See it <https://www.cmh.cat/web/cmh/actualitat/estimada-casa-querido-barrio/documents-relacionats> [Consultation: november 2023].

fostering open communication, and seeking consensus through ADR mechanisms. By embracing collaborative approaches, communities can work together to achieve mutually satisfactory agreements, ensuring the success of multi-unit building renovation projects while addressing broader societal and environmental challenges.

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