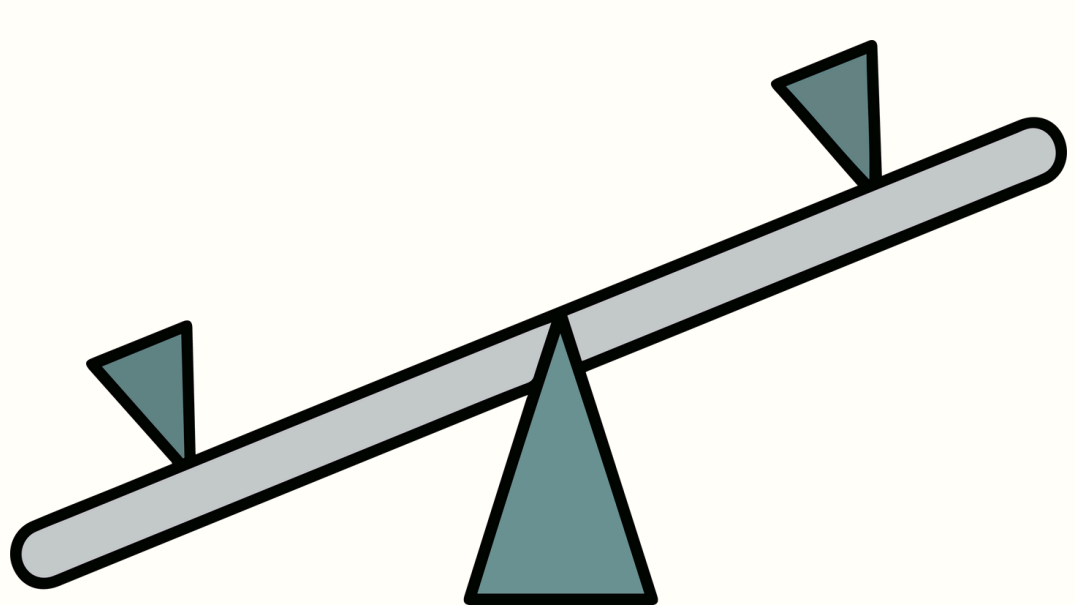


Tips for Managing Power Imbalances Between Landlord Attorneys and Tenants in Eviction Mediation



RSI

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Authors

Victoria Wang, PILI Fellow

Jennifer Shack, Director of Research

Jasmine Henry, Research Associate

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Contact RSI

11 East Adams St., Suite 500

Chicago, IL 60603

312 922 6475

info@aboutrsi.org

AboutRSI.org

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Introduction

This guide is written for mediators who mediate cases involving an attorney on one side and a self-represented tenant on the other. These mediations involve stark differences in knowledge and position that can create power imbalances between the parties. The guide is informed by the input of experienced mediators, prior research and our own observations of eviction mediations. During our observations, we watched for power imbalance issues as well as examples of good practices that mediators used to address them.

As you read through this guide, you will find information on what to look out for and how to address each power imbalance issue if it arises. We also include quick tips at the end of each section that you can refer to if you need a quick reminder of what to do. Although our guidance is geared toward eviction mediations, it can apply to other contexts as well.

Issue 1: How can I address technology issues?

A party's difficulty with technology can be a source of power imbalance in remote or hybrid mediation, especially if the party experiencing difficulty is a self-represented tenant. Three common issues arise when conducting a video mediation. First, unstable or slow internet connections can cause parties to miss important parts of the discussion or be unable to respond in real time. Second, a party's difficulty with technology tends to slow the process and may make them unable to participate via video or to sign documents while on Zoom. Third, participation via mobile phone can make it more difficult for the participants to turn on video or to view documents.

If a party can't hear or communicate clearly, or can't see documents or sign paperwork, they are at an immediate disadvantage. Technology issues can frustrate parties, silence them, limit their participation or push them toward agreements they don't fully understand.

This section helps you recognize when a party's technology problems may create a power imbalance and what you can do to help them to more fully participate.



What should I watch for?

Throughout the mediation, watch for evidence of internet connectivity issues such as frozen video, interrupted audio or quizzical looks, which may indicate a party has missed something. Below are further examples about the technical issues that can put a party at a disadvantage.

Party has a slow or unstable internet connection

- Party's video freezes.
- Party's audio is delayed.
- If video is off, party does not respond or responds in a way that demonstrates that they did not hear what was said clearly.

Party has low digital literacy

- Party has issues turning their camera on or unmuting their microphone.
- Party has trouble finding the chat function or changing their display name in a video call.
- Party has trouble joining breakout rooms or waiting rooms for caucus.
- Party has problems locating and signing digital documents or completing other technology-related tasks.

Party participates on their mobile phone

- Party cannot find the mute button.
- Party has limited ability to view shared documents.
- Party may not be able to see all parties at the same time.
- Party cannot sign the agreement without exiting Zoom.

Issue 1: How can I address technology issues?



What should I do?

In general, it is important to know how to help parties resolve common technical issues on both computers and mobile phones. These include how to turn on video, how to find the mute button and how to sign the agreement.

At the outset of mediation, you may want to ask the parties to let you know if they experience any technological difficulties or internet issues. However, it is important to watch for technical issues and not rely on the parties to bring them to your attention.

If a technical issue arises at any point in the mediation, there are three steps to take:

- Pause the mediation
- Attempt to help the party resolve the issue
- If you cannot resolve a connectivity or video issue, switch to audio only or dial-in mediation, if possible
- If any party is participating in mediation without video, you can read documents out loud as you draft them (including the agreement terms)

As a last resort, you may need to end the mediation and reschedule the meeting for a later time if the party cannot participate fully. Read below for various options for helping parties who have technical difficulties during the mediation.

Address internet and connectivity issues

- If you see a party who is experiencing slow or unstable internet, pause the session. Do not move forward with substantive discussion until everyone's connection is stable.

Issue 1: How can I address technology issues?

- Example prompt: “Let’s pause for a moment to make sure you heard everything we just discussed. Can you tell me the last point you heard clearly?”
- If the party is having trouble maintaining a stable internet connection, you may ask the party to dial in to the mediation on their phone. If you do this, you can ask the other participants to turn off their video as well. This will place everyone on the same footing and help reduce any sense that one side is at a disadvantage because of technical issues.
- Once everyone’s connection is stable, summarize and repeat any points that may have been missed. Check directly with the party who experienced technology issues to be sure they understand any discussions they may have missed before moving forward in the process.
- If the issue of unstable internet persists and time permits before the case returns to court for their next appearance, you may offer to reschedule the mediation session. Please note that you should try all possible remedies before seeking to reschedule. Rescheduling can be challenging and frustrating to the parties and must fit within the program timelines.

Help the party with technology issues as they occur

- If a party is having technological issues, try to address the issue with the party. For example, if they do not know how to turn on their video, you can tell them where to find the camera icon on their screen.
 - Example prompt: “Let’s walk through turning on video together. Are you using your cellphone? [They respond yes.] Okay. Here’s what you need to do.” (Give step-by-step guidance).

Issue 1: How can I address technology issues?

- If one party has a problem with their camera and cannot appear on screen, consider having all parties turn their camera off. This effectively levels the playing field and creates an environment of equal treatment for the parties.
- If a party requires a translator, work with the provided translator to guide the party through addressing their technology issue.
 - Example prompt: “If you’re having trouble hearing or seeing us, let me or the interpreter know so we can walk you through the steps.”

Adjust as needed for a party using mobile phone

- If a party is participating on their mobile device, be aware that they may have a limited ability to view and review any documents broadcast via the “share screen” feature.
- Confirm that all parties can view shared documents before starting any relevant discussion. If any party cannot see the document on their screen, read critical sections aloud as you review the document.
 - Example prompt: “Can you see the document on your screen right now? If not, I can read it out loud or email it to you so you can follow along.”
- The mediation program asks that you have the parties sign their agreement while still in the Zoom session. If any party cannot sign the agreement while in the Zoom session, ask them to log out of the Zoom meeting to sign the agreement and then return to the Zoom meeting to confirm completion. If they need to go elsewhere to connect to the internet, you may end the Zoom session and have them sign the agreement by a particular date.

Quick Tips for Your Toolbox

- **Check early and often:** Our team conducts intake with tenants and landlords on Zoom so we can troubleshoot tech issues as early as possible. Whether you do this or not, it is best to confirm that everyone's cameras, audio and shared screen work. Follow up whenever you see an issue or introduce new documents.
- **Make participation easy:** If a party struggles with tech, pause and walk them through the problem step-by-step. If an interpreter is present for that party, have them assist. Address technology issues before moving forward with discussion or agreements.
- **Offer alternatives and flexibility:** Use phone audio, send documents by email or adjust the format if a tech problem cannot be solved quickly.
- **Secure the agreement:** If the parties reach agreement, have them sign it while still in session. If needed, have them briefly log off to complete the signature and return to confirm when done.

Issue 2: What can I do when I have mediated with the attorney before?

In eviction mediation, it is common for mediators to work with the same attorneys repeatedly. While familiarity between attorneys and mediators can help sessions run smoothly, it can also create the appearance of bias, especially to self-represented tenants who may already feel disadvantaged by the court process and their relative inability to obtain attorney representation. Therefore, it is especially important for you to maintain neutrality and transparency so that you can build trust with all parties.

This section helps you recognize when your interactions with an attorney just before and during the mediation might create a perception of bias and what you can do to avoid that perception.



What should I watch for?

In eviction mediations involving self-represented tenants, there are some perceived bias issues to look for. If a tenant sees you greeting or conversing with the landlord's attorney in a familiar way, the tenant may assume that you will favor the attorney's side. Or, even if they do not initially assume bias, they may still come to see your actions as biased in retrospect if they are unhappy with the mediation's outcome.

Their perception, whether or not it is accurate, can undermine their trust in you and the process. Once trust is undermined, parties may be less willing to engage in the process or may view the process as unfair. Read below for actions that can create a perception of bias and what might indicate the tenant perceives you to be biased.

Actions that may create the perception of bias

- You and the attorney engage in small talk before or during the mediation, which can be seen as an indicator of you favoring the attorney.
- You address the attorney more often or in a warmer tone than you address the tenant.

Tenant reactions that may indicate perceived unfairness

- Tenant appears uneasy or withdrawn after you greet or interact with the landlord's attorney.
- Tenant gives negative nonverbal cues following your interaction with the attorney. Negative nonverbal cues can include crossed arms, lack of eye contact or hesitant responses, among other things.



What should I do?

It is essential to remain aware of the perception of bias that friendly chatter with the attorney can cause. It is also important to acknowledge your prior mediations with the attorney to the tenant and to assure the tenant that you will remain neutral. The tips in this section can help you avoid perceptions of bias.

Acknowledge relationships early, and be transparent

- If you have worked with the attorney before, acknowledge it openly while making clear that your role is neutral and focused on ensuring fairness for all parties.

Issue 2: What can I do when I have mediated with the attorney before?

- Example prompt: “I’ve had prior mediations with [Name of the Attorney], but I don’t have any relationship with them outside of that. I want to assure you both that my role is completely neutral in this case. My goal is to ensure everyone has the same opportunity to fully participate. Tenant, if you have any questions or concerns about this, I’m happy to address them before we begin.”

Balance your interactions with the parties

- Greet all parties warmly and equally.
- Make introductions in the same tone and style for all parties in the mediation.
- Try to avoid initiating or engaging in small talk with only the attorney, especially if you have met the attorney before.
- If you engage in friendly small talk, try to do so equally with both parties to avoid any perception of bias.

Limit side conversations with parties

- Keep any pre-session conversations brief, professional and, whenever possible, within sight or hearing of all parties.
- Politely change the subject if the attorney tries to engage you in conversation.
- If you have a separate matter to address with any party in mediation, you should do so outside of the session, so as to avoid any appearance of bias toward that party.

Quick Tips for Your Toolbox

- **Be upfront about prior mediations:** Acknowledge any prior work with the attorney and make clear that your role is impartial.
- **Balance tone and attention:** Greet and address all parties equally.
- **Share information equally:** Give the same overview and definitions to all parties, even if one party has heard it before.
- **Avoid side chats:** Keep any conversation brief, professional and within earshot of all parties.

Issue 3: What can I do when a party dominates the conversation?

Sometimes one party takes over the conversation, whether it is an experienced attorney driving the discussion or a tenant with a detailed story speaking at length. Either way, one party dominating the discussion can prevent the other side from being heard, increase frustration and create the appearance of bias. And when a party feels mediation is one-sided, it can derail the mediation by making the party dig in, becoming defensive and unwilling to move from their position.

In some mediations, especially those with self-represented tenants, attorneys may take on a very active role in questioning the tenant and dictating agreement terms. This may lead the tenant to feel cornered or unsupported, or to feel they cannot question terms of the agreement.

This section helps you recognize when one voice is overshadowing the other and offers strategies to encourage balance.



What should I watch for?

Domination of the discussion in your mediation can come from either party. Either party can speak for a long time without pausing, frequently speak over or interrupt the other party, shut down the other party, ruminate on one topic, or refuse to discuss an important and relevant issue that the other party wants to discuss. Read below for some ways a party may dominate the mediation.

Attorney dominates the conversation

- Attorney uses legal jargon or speaks at length, leaving little room for the tenant to respond, especially if the tenant is unfamiliar with the terms being used by the attorney.
- Attorney uses an authoritative tone that the tenant finds intimidating, causing the tenant to be less likely to speak up and contribute to the conversation.
- Attorney maintains a strong presence by conducting substantial reality testing, particularly when they think the tenant may not be able to fulfill the agreement terms. This is not necessarily negative, as it can help move the conversation forward; but if you defer too much to the attorney, the tenant may feel cornered, interrogated or even outnumbered.
- Attorney explains concepts at a quick pace, especially if they are using legal terms or describing complex situations. Often, if ideas are presented too swiftly, the tenant may lack the space to follow, remember and comprehend what the attorney is saying.

Tenant dominates the conversation

- Tenant speaks at length or interrupts the other party.
- Tenant remains stuck on prior grievances. For example, a tenant may understandably be upset by prior actions of a neighboring tenant that the landlord cannot control, but resists moving on from this topic.
- Tenant focuses on an issue that cannot be addressed by the landlord, such as the injustice of the court system or the government.

Issue 3: What can I do when a party dominates the conversation?



What should I do?

It is important to actively manage the mediation to allow both parties the opportunity to speak and be heard. At the outset, let both parties know that they will both have the same opportunity to speak. If one party begins to dominate the discussion, address it early. Redirect the conversation or interrupt the discussion when needed. The advice below will help you to actively manage your mediation so that neither party dominates the discussion.

Set expectations early

- At the start of the session, establish that both parties will have the time and chance to speak and respond. This ensures that both parties can voice their thoughts and concerns.
- Set the expectation at the outset that you may interrupt parties during the mediation in order to move the mediation along.

Interrupt or redirect when one party dominates

- If one party is dominating the conversation by speaking for a long time, consider interrupting them. After interrupting, demonstrate you heard and understood them before moving on.
 - Example prompt: “Thank you for that explanation, Attorney. It sounds like (summarize Attorney’s statement). Before we move forward, I’d like to hear from Tenant.”
- Ask attorneys who are speaking quickly to slow down and take their time explaining new ideas to the Tenant.

Issue 3: What can I do when a party dominates the conversation?

- Try shifting focus to the other party. Directing the focus toward the non-dominating party allows them to add their input to the overall discussion and enables you to make sure everyone is on the same page before moving forward.
 - Example prompt: “Tenant, thank you for those details. I’d like to pause here; Attorney, is there anything you wanted to share at this time?”

Address a party who repeatedly rehashes the same issue

- If a party restates an issue and you have not already acknowledged their concern, recognize and reflect their concern back to them. If appropriate, you can ask the other party to respond to the concern.
- If the party continues to rehash an issue that cannot be resolved in the mediation, remind them that there is limited time to mediate.
 - Example prompt: “I hear that this issue is very important to you. Unfortunately, this isn’t something that we can resolve in the mediation.”
- If all else fails, try meeting privately with the party to help them get past the issue.

Handle repeated interruptions

- If one party repeatedly interrupts the other party, ask parties to speak one at a time to make sure you can hear everyone correctly.
 - Example prompt: “Let’s pause here. I’m having trouble hearing when more than one person speaks at a time. You will both have the opportunity to speak, but I need you to go one at a time. So, first, Tenant/Attorney, would you please repeat what you were just saying?”

Issue 3: What can I do when a party dominates the conversation?

(Then repeat for additional party:) “Attorney/Tenant, thank you for waiting, would you please also repeat what you were just saying?”

- You may also mute the parties or ask them to mute themselves when not talking if the problem is not resolved.

Play an active role in reality testing and agreement drafting

- You can allow the attorney to engage in effective reality testing during the session, but do not defer fully to the attorney. While you can utilize their court expertise in answering questions, try to take a more active role in questioning the tenant about their situation and whether they can realistically abide by the agreement terms.
 - Example prompt: “Attorney, thank you for your questions. Tenant, what questions do you have? What is your understanding of what’s been said so far?”
- When drafting agreements, it is fine to ask the attorney for their take on the language to include in the agreement terms. But it is important to independently explain the terms to the tenant and to ask them directly if they agree to the terms being offered by the attorney.

Quick Tips for Your Toolbox

- **Remember that domination can come from either side:** Look for signs of one party dominating the conversation so that you can intervene as needed.
- **Set expectations early:** Let parties know each will have equal chance to speak.
- **Interrupt respectfully:** Step in if one side takes too much time or prevents the other from speaking.
- **Bring in the other party:** Call on the quieter party to bring them into the conversation.
- **Acknowledge but refocus:** Recognize repeated concerns from a party, then guide the discussion back to resolution.
- **Be active:** Let the attorney use reality testing to help move the case forward, but remain in control of the session so the tenant does not feel interrogated or overpowered. Ask the attorney for language to include in agreement terms, but provide direct explanations to ensure the tenant understands and agrees.

Issue 4: What can I do if a party is silent or passive during the discussion?

When a party doesn't speak up as agreement terms are being discussed, the mediator may wonder: Is the party silent because they're following along and agree — or because they're completely lost? This is a common situation in eviction mediation, especially when self-represented tenants are facing landlord attorneys.

Silence can signal confusion, fear or feeling overwhelmed. These negative emotions and the inability to express and work through them can lead parties to agree to terms that may not be realistic for them or may even be detrimental to them.

This section helps you recognize when a party's silence may reflect a power imbalance and what you can do to address it.



What should I watch for?

Silence or very brief answers can signal confusion, fear, intimidation or feeling overwhelmed. You can also watch body language for signs of disconnection, such as avoiding eye contact, turning off video, or speaking in a quiet or hesitant voice.

The following are situations in which it is most important to watch out for signs of a tenant's confusion or intimidated silence.

Issue 4: What can I do if a party is silent or passive during the discussion?

Attorney proposes confusing terms

- Attorney proposes terms quickly and tenant nods but does not speak, indicating that the tenant may not understand what the terms mean.
- Attorney uses legal jargon and does not provide plain language definitions for the tenant, which may limit the tenant's ability to meaningfully participate in the negotiation and drafting of the agreement.

Complex issues are discussed

- Tenant does not speak up when legal terms, payment terms or legal consequences are discussed, potentially indicating that they are confused.
- You ask, "Any questions?" and the tenant stays silent, instead of actively affirming that they do not have any questions. This may mean that the tenant has questions but they are too embarrassed or intimidated to ask without being directly prompted.



What should I do?

It is important for the tenant to speak up during their mediation to ensure that the final agreement (or lack of agreement) accurately reflects their intent. If you notice either party — especially the tenant — remaining silent throughout your mediation, you can take concrete actions to bring them into the conversation, including the following.

Issue 4: What can I do if a party is silent or passive during the discussion?

Normalize asking questions

- At the beginning of the session, make clear to both parties that you would like them to speak up and ask questions during the session.
 - Example prompt: “It’s completely normal to have questions, and there’s no rush today. Please feel free to stop me at any time.”
- Provide a session structure that allows both parties equal time to share their stories.

Communicate directly with both parties

- Check in with the tenant directly and individually throughout the mediation to ensure they understand the discussion and agreement terms.
 - Example prompt: “Tenant, what questions do you have about what we just talked about?”
- Ask the tenant to explain what they understand about the discussion or agreement terms.
 - Example prompt: “Tenant, can you tell me in your own words what you understand so far?”
- Ask the tenant to respond to the proposal instead of simply asking them if they agree or if they have any issues.
 - Example prompt: “Tenant, I’d like to hear your thoughts on Attorney’s proposal.”

Use caucus when appropriate

- Caucus can be helpful when you sense that the tenant is uncomfortable speaking in front of the attorney.

Issue 4: What can I do if a party is silent or passive during the discussion?

- Consider caucus if you are not sure what the tenant is thinking and your attempts at prompting a response in joint session are not productive.
- Use caucus when the attorney's behavior or communication style limits balanced discussion or discourages the tenant's participation; it can also create space for the attorney to reflect on how the mediation is proceeding and the proposed agreement's durability.

Quick Tips for Your Toolbox

- **Voice matters:** It is important for parties to feel like they have a voice in their mediation. Feeling they expressed themselves and were heard increases their satisfaction, understanding and follow-through.
- **Silence is not always agreement:** Don't assume that silence equals agreement, especially when it's a tenant staying quiet.
- **Invite input directly:** If you notice one party is not speaking up, you can say: "I've noticed you've been a bit quiet, and that's completely fine. Is there anything on your mind you'd like to share now?"
- **Use caucus judiciously:** Using caucus with the tenant can help to raise their voice and to check on their needs. Using caucus with the attorney can help them reflect on how the mediation is proceeding and the durability of the proposed agreement terms.

Issue 5: How can I address emotional stress and fear?

Eviction mediations are emotionally charged. For tenants, the prospect of losing housing can create fear, shame or hopelessness that overshadows their ability to participate fully. Even when attorneys and mediators act professionally, the stress of facing eviction and navigating an unfamiliar legal process can leave the tenant overwhelmed or silent and therefore unable to meaningfully participate in their session. When these emotions drive the interaction, the tenant may agree too quickly, withdraw from discussion, or feel the process is stacked against them.

This section helps you recognize when stress and fear are shaping the mediation and offers strategies to keep the process balanced and supportive.



What should I watch for?

In eviction mediations, the stakes are high. The tenant may be facing a number of traumatic concerns, including the loss of their home, financial instability and damage to their rental history. These pressures can create emotional stress and fear that can impact how they engage in the process. Look for disengagement and evidence of parties experiencing strong emotions.

Disengagement with the process

- Tenant stays silent or appears disengaged, possibly reflecting their assumption that the process is stacked against them.
- Tenant acquiesces immediately to agreement terms without asking questions or with noncommittal language, possibly signaling that they just want to end the process rather than fully understand the terms. For example, if you ask the tenant if they agree with a term and they say, “I don’t mind” and then you ask them about another term and they again respond, “I don’t mind.”

Strong emotional reactions

- Crying and raising their voice are clear indicators that the tenant is having a strong emotional response, such as anxiety, distress, shame or anger.
- Nonverbal cues, such as crossed arms or facial expressions, are other indicators to watch out for.



What should I do?

It is important to identify and address when a tenant is experiencing strong emotions. There are many ways to address the issue — including recognition, validation and taking a break. Helping the tenant process their emotions allows them to better focus on the mediation process and any potential agreement. See the suggestions below for helping tenants process their emotions.

Acknowledge and normalize the party's emotions

- Don't ignore strong emotions. Acknowledge what they are feeling to help them move on.
- If you notice the tenant is feeling strong emotions, validate their emotions and remind them that it is common to feel negative emotions (for example, anxiety or stress) in situations like these.
 - Example prompt: "Many people find this process overwhelming. It's completely normal to feel that way. My role here is to support you throughout the process."

Slow down and create space

- If you notice that the tenant is no longer fully participating in the mediation, try to slow down the process and create space for them to re-engage.
- You can do this by taking a break, repeating terms or asking open-ended questions to draw the tenant back in.
 - Example prompt: "Let's pause for a moment. Tenant, what questions or concerns do you have right now?"

Offer caucus when needed

- If slowing down and creating space does not seem to help the tenant, you can move into caucus to offer the tenant the opportunity to more fully work through their emotions without the other party present.
- Caucus can also be helpful if you are concerned that the tenant does not feel they can speak freely in front of the other party or that they are feeling coerced.

Issue 5: How can I address emotional stress and fear?

- Example prompt: “Let’s take a break to meet privately. Tenant, I’d like to meet with you first. Then, Attorney, I will meet with you.”

Quick Tips for Your Toolbox

- **Normalize the experience**: Remind tenants it is common to feel overwhelmed or anxious during the process. Reassuring them that people in their position share the same feelings can reduce defensiveness and help them re-engage in the process.
- **Acknowledge emotions**: Do not ignore stress or fear; address it directly and respectfully. This builds trust and signals that emotional reactions are valid and manageable within mediation.
- **Slow down**: If participants appear confused or disengaged, take extra time to clarify issues, check for understanding and invite questions. Slowing the pace can prevent uninformed agreement and encourage thoughtful decision-making.
- **Use caucus**: If emotions are running high or one party seems uncomfortable speaking in front of the other, consider meeting privately.

Issue 6: How can I help parties understand court procedures and legal terms?

Eviction mediations often involve legal terms and court procedures that self-represented tenants do not understand. Attorneys may use technical language or assume the tenant has knowledge they do not have. Additionally, the agreement forms often have confusing terms. If the tenant doesn't understand what is happening or what a term means, they may feel lost, excluded or agree to terms they don't understand.

This section helps you identify when legal jargon is creating a barrier and offers strategies to explain terms in a clear, neutral and accessible way.



What should I watch for?

Tenants may respond to their confusion or overwhelm by acquiescing or giving up. It is important to watch for cues that indicate tenant confusion and work to ensure legal language is not a barrier to tenant understanding. Note that silence and nodding are not necessarily indicators of agreement. Below are some cues to look for.

Tenant is silent when discussing complex issues

- Tenant stays silent and doesn't ask questions even when the issues or terms are complex.
- Tenant nods along but does not say anything.

Tenant agrees without asking questions

- Tenant doesn't ask questions about the agreement. They should have questions, particularly if terms have not been explained to them. If they do not ask questions, they may have them but be reluctant to speak up, or they may not know what they should be asking.
- Tenant just nods. Nodding may not indicate agreement. It may only indicate acquiescence. Or the tenant may just be nodding along without comprehension.



What should I do?

Eviction cases often involve unfamiliar and intimidating legal jargon. You play a critical role in making sure all parties understand the terms being used, so that they can make informed decisions. The following strategies provide ways to keep legal jargon from getting in the way of the tenants' understanding.

Normalize questions

- At the beginning of the session, make it clear that asking questions is expected and a welcome part of the process.
 - Example prompt: “Legal terms can be confusing if you don’t work with them every day. Please feel free to stop me at any time if something isn’t clear.”

Notice when legal jargon appears and explain it in plain language

- Be proactive about explaining legal terms that come up during the discussion. When necessary, step in to pause the conversation and define legal terms in plain language. You may also at this point ask Attorney if this is correct.
 - Example prompt: “Tenant, Attorney just mentioned the ‘status date.’ That refers to the upcoming court date where you will update the judge on what is happening with your case. Attorney, do you have anything to add?”
- See the [Definitions section](#) for examples of plain language explanations for most frequently mentioned legal jargon.

Encourage attorney to clarify

- Ask the attorney to put terms in plain language.
 - Example prompt: “Attorney, could you explain what that means in simpler terms, so everyone is on the same page?”
- Invite the attorney to explain the implications of agreement terms or the impact of legal terms.

Check for understanding directly

- Ask the tenant to repeat back their understanding of legal terms.
 - Example prompt: “Tenant, can you explain what that means will happen in your situation?”
- Check with the tenant whether they understand how the discussed terms affect them.

Quick Tips for Your Toolbox

- **Encourage questions:** Make it clear that asking questions is welcome and part of the process.
- **Watch for confusion:** Look for silence, hesitation, nodding without questions or repeated requests for clarification. Step in to check whether the parties are following the discussion.
- **Pause and explain when legal jargon appears:** Explain legal terms in plain language or encourage the attorney to clarify, using the [Definitions section](#) of this toolkit if needed.
- **Check understanding:** Ask tenants to restate what they heard in their own words to confirm their understanding before moving forward.

Issue 7: How can I discuss complex proposals?

In eviction cases, attorneys often move quickly and present complex proposals that may have significant legal consequences. Their priority is often to conclude the mediation efficiently, but this pace can overwhelm self-represented tenants. As a result, tenants may agree to terms they do not fully understand or whose implications they have not considered.

This section helps you identify when a proposal may be too complex for a tenant to follow in real time and shows you how to slow down, explain the proposal clearly and confirm the tenant's understanding.



What should I watch for?

Be aware of what discussion content the tenant may not understand, such as different payment proposals, legal terms or options with different legal consequences. Also keep an eye out for cues that the tenant is not clear about what is being discussed. Common topics that confuse tenants are listed below.

Different agreement options and legal consequences

- Some agreement terms present options with different financial and physical consequences, such as “pay and stay” versus move out.
- While negotiating payment terms, the tenant may face a confusing list of numbers, such as installments, lump sums or late fees that are difficult to track or compare.

Issue 7: How can I discuss complex proposals?

- Agreement terms often include legal language that the tenant likely does not understand but which have vastly different consequences for their case, such as “dismissed with prejudice” or “dismissed without prejudice.”

Consequences of noncompliance

- The tenant may not realize what happens if they do not follow the agreement (for example, sheriff enforcement or eviction). This is particularly important if they agree to terms they cannot realistically fulfill.



What should I do?

It is important to make sure the parties, especially the tenant, understand the complete terms of their agreement and how their agreement will affect them financially and physically. When parties grasp what the terms will mean for them, they are better equipped to follow their agreement. Below are tips for helping parties understand complex issues in eviction.

Slow the pace and break proposals into manageable steps

- Pause after each term is presented.
- Summarize each part in plain language before moving to the next part and ensure the tenant understands what the proposal means for their situation.
 - Example prompt: “Let’s take one step at a time. First, it sounds to me that Attorney is proposing that your next court date be changed to mm/dd/yyyy. This will give you time to get rental assistance. Does that make sense to you? Do you have any questions?”

Issue 7: How can I discuss complex proposals?

- Compare options and consequences side by side. Lay out the key differences between options and their relative consequences to the tenant.
 - Example prompt: “Here’s how these two options differ. Which one makes more sense for you?”

Check understanding frequently and directly with the tenant

- Address the tenant directly to confirm comprehension.
 - Example prompt: “Tenant, what do you think this part of the agreement means?”
- Check understanding with the tenant directly to avoid future confusion.
 - Example prompt: “Tenant, what would happen if you chose this option?”

Clarify legal language

- This is another opportunity to translate legal terms into everyday language. Whenever legal terms come up in the mediation, it should become second nature to explain them in plain language.
- See the [Definitions section](#) for some examples.

Quick Tips for Your Toolbox

- **Use plain language:** Avoid legal jargon and explain terms in everyday words.
- **Break everything up:** Go over one term at a time and one party at a time. Check for understanding before moving on.
- **Put options and consequences side by side:** Make the differences between different options clear in plain language.
- **Clarify legal terms:** Translate legal jargon into plain language, using this toolkit's [Definitions section](#) whenever needed.
- **Invite the tenant to explain back:** Ask tenants to repeat the agreement back to you in their own words; this confirms real understanding and allows you to clarify any misunderstandings using plain language.

Issue 8: How can I ensure agreements are fairly drafted and fully understood?

In eviction mediations, the agreement drafting stage is when power imbalances can be most visible: Attorneys are usually more familiar with the agreement form and more comfortable drafting additional terms. Additionally, mediators may feel pressure to defer to attorneys, especially if they are not legally trained. Mediators may also look to the attorney to explain particular terms or to tell them what boxes to check. Self-represented tenants, by contrast, may disengage, feel intimidated or agree without fully understanding what they are signing. This increases the risk of uninformed consent and the tenant later not following through with the agreement.

This section helps you as a mediator ensure that the written agreements you draft reflect informed consent and that all parties understand the terms.



What should I watch for?

Attorney assistance in drafting agreements is sometimes needed. However, it is important to take care not to have the attorney dictate the terms of agreement without the tenant's input. Below are some ways you might unintentionally introduce a power imbalance during agreement drafting.

Working almost exclusively with the attorney in drafting the agreement

- You as mediator ask the attorney what they want for agreement terms and then move to the next term without explaining it to the tenant or getting the tenant's agreement.
- Attorney dictates the language of additional terms without explanation to the tenant about what those terms mean.

Tenant disengaging and not demonstrating they understand

- The tenant may stay silent, nod without questions or appear confused but not speak up. This disengagement raises the risk that they agree to terms without a clear understanding of what the terms mean.



What should I do?

When the attorney drives the agreement drafting, it is important to slow the pace of discussion, clarify terms and check directly with the tenant to ensure informed consent. The following strategies can help guide this process.

Do not defer entirely to the attorney

- Allow the attorney to contribute, but don't let them control the explanation or the pace. Step in to restate or clarify agreement terms in neutral terms to the tenant.

Issue 8: How can I ensure agreements are fairly drafted and fully understood?

- Example prompt: “Attorney, thank you for your input. Tenant, Attorney is offering to strike the next court date and continue it for one month to give time for your rental assistance to come through. This means that you will not go to court on mm/dd/yyyy, but that a new court date will be set for mm/dd/yyyy. Does that work for you?”
- Make sure to check that the tenant understands and agrees with the attorney on particular terms.
 - Example prompt: “Attorney has proposed that the case be dismissed with prejudice. That means you would be asking the judge to dismiss the case and the landlord would not be able to refile it. The case would be completely over as of mm/dd/yyyy if you pay the amount you agree to pay before that date. Do you agree with this term?”
- Slow down when the attorney recommends additional terms. Pause and review any new language, then assure the tenant agrees.
 - Example prompt: “Tenant, Attorney is proposing an additional term. Let’s take a moment to go through what that means so you can decide whether you agree.”
- If needed and when appropriate, discuss with the attorney the need to ensure tenants understand the agreement terms so they will be more likely to comply with the terms. You may want to do this by meeting privately.

Engage with the tenant directly

- Address the tenant by name, ask open-ended questions and have them explain terms back to you.
 - Example prompt: “Tenant, what does this section mean the landlord will do if they receive payment?”

Issue 8: How can I ensure agreements are fairly drafted and fully understood?

- Confirm informed consent at the end. Before signatures, check explicitly with parties, especially the tenant, that they understand and agree to all terms.
 - Example prompt: “Before we sign, Tenant, can you tell me what steps you need to take under this agreement?”

Quick Tips for Your Toolbox

- **Stay active**: Do not defer fully to attorneys. Remain authoritative throughout the mediation, including while drafting the agreement.
- **Use plain words**: Translate legal phrasing into everyday terms.
- **Engage tenants directly**: Ask tenants to explain terms back in their own words.
- **Pause on added terms**: Review attorney-proposed additions slowly and clearly, and make sure tenants fully understand the terms before asking them to sign the agreement.
- **Confirm understanding**: Before signing, check that tenants understand and agree with the proposed terms.

Issue 9: How can I manage the scope of discussion when post-vacate payment issues come up?

Sometimes mediation focuses only on possession (whether the tenant will move out or stay) and leaves other issues unresolved. A common example is post-vacate payment obligations: Self-represented tenants may agree to move out, but questions remain about whether they owe money, how much is owed and how it will be paid. Instead of addressing these questions, attorneys may simply state that the case will be dismissed if the tenant moves out and then refer the tenant to the landlord or management company. This can give tenants the impression that all issues are resolved, when in fact unpaid amounts may still be pursued through collections or small claims court.

The mediator's role is not just to clarify what is or is not resolved by the parties' written agreement, but also to help shape the proper scope of the discussion so that tenants understand the consequences of leaving payment issues unaddressed in mediation. This may include asking the attorney to clarify or address these issues if they are authorized to do so.

This section helps you recognize when the scope of discussion is too narrow and offers strategies to ensure tenants are making informed decisions.

Issue 9: How can I manage the scope of discussion when post-vacate payment issues come up?



What should I watch for?

Watch out for any case in which the filing is for possession only. In those instances, be aware when the attorney does not fully address the money owed. Below are some examples of what to look out for.

Attorney does not address relevant post-vacate issues

- Attorney may describe dismissal without clarifying what happens to unpaid rent or fees.
- Attorney may direct the tenant to the management company instead of addressing payment after a move-out.

Unresolved financial issues

- Financial issues were mentioned during the discussion but not resolved or included in the agreement.
- It is apparent that financial issues are involved even if they are not directly spoken of.

Tenant confusion about post-vacate issues

- Tenant shows signs of confusion.
- Tenant statements or questions indicate they might assume dismissal means they have no further payment obligations.

Issue 9: How can I manage the scope of discussion when post-vacate payment issues come up?



What should I do?

Dismissals and money-related terms can be confusing for the tenant, especially when financial obligations are not clearly explained. To avoid tenant confusion about post-vacate issues, clarify with the attorney what dismissal means, whether money issues have been resolved and which matters remain outside the agreement. The following strategies can help ensure tenants fully understand what is and isn't resolved.

Clarify how money issues are handled

- Ask whether the attorney is authorized to resolve the money issue such as rent due or homeowners association (HOA) fees. If not, ensure they explain what will happen to the outstanding balance.
 - Example prompt: “Attorney, are you authorized to address the back rent the tenant owes? If not, could you explain what the next step will be for any unpaid amounts, so Tenant knows what to expect?”
- Make sure the tenant hears directly whether payment is part of the agreement or left unresolved.
 - Example prompt: “Attorney, how do the agreement terms affect the HOA fees owed, or whether the issue of HOA fee payment will still need to be dealt with outside of mediation?”

Highlight what is and isn't resolved

- Ensure the tenant understands that “dismissal” does not automatically resolve all issues.

Issue 9: How can I manage the scope of discussion when post-vacate payment issues come up?

- Example prompt: “Attorney, what does dismissal mean in this case? Will Tenant need to pay any past rent or fees if you all agree to dismissal?”
- Encourage the attorney to distinguish between possession and financial obligations.
 - Example prompt: “Attorney, just so everyone is clear, is today’s agreement resolving possession only, or both possession and payment?”
- If the agreement only addresses possession and does not cover any rent or debt issues, ensure the tenant understands that the agreement does not resolve the debt owed.
 - Example prompt: “Tenant, the landlord only filed for possession. This means they are only asking the court to give them permission to evict you. The agreement does not resolve the issue of any back rent owed. Do you understand that if you owe back rent, you still need to resolve the payment issue with the landlord?”

Quick Tips for Your Toolbox

- **Clarify the money issue**: Ensure the attorney states whether payment is resolved or left out.
- **Confirm attorney’s authorization and consequences**: Ask if the attorney is authorized to resolve payment; if not, have them explain what happens next (for example, collections or small claims).
- **Distinguish scope**: Make sure all parties hear whether the agreement covers possession only or possession plus payment.

Legal Terms and Plain Language Definitions

Legal Term	Plain Language Definition
<u>Case Status/Court Process</u>	
Status date	Future court date where the parties will update the judge on what is happening with their case. There is no trial on that date.
Next court date	You should appear in court on this court date or the judge will make decisions without you.
Strike the court date*	The court date (or hearing) is canceled, and you do not have to go to court on that day.
Case is continued	The case is not closed and will continue in court. You should come back to court on the new court date because the case will move forward.
Dismissed	The case is ended/closed, and the judge does not make a ruling. You do not have to go back to court.
Dismissed without prejudice*	The case is ended/closed, but the landlord can refile the claim in the future.
Dismissed with prejudice*	Case is ended/closed, and the landlord cannot refile the same claim again.
<u>Agreement Terms</u>	
Pay and stay order	The tenant agrees to pay a set amount that they owe to the landlord, as well as ongoing rent, and the landlord agrees that the tenant can remain in the unit.
Move out order	The tenant agrees to move out by a set date. Sometimes, the tenant may also agree to pay money that is owed to the landlord.

Legal Terms and Plain Language Definitions

Sealing the case*	<p>If your case is sealed, it will not appear on the public record. This means that if you apply to rent another apartment, the landlord will not be able to see that an eviction case was filed against you. However, the landlord or their attorney may have notified credit agencies. In that case, any landlord that looks at your credit report will be able to see that an eviction was filed against you but will not be able to see the result of the case.</p> <p>The parties can ask to have your case sealed in the agreement, but only the judge can make the final decision.</p>
Motion to reinstate	Asking the court to reopen the case.
Claim for possession	The landlord requests that the court gives them physical control of the property.
Materially violate	When one person fails to fulfill an important part of the agreement.
Reject the settlement	<p>If the judge suggests changes to the agreement and you do not agree to those changes, you can reject the settlement.</p> <p>If that happens, the settlement will not go forward, and your case will return to the court process. The judge will then decide the outcome at a hearing or trial.</p>
Agreement is entered	The judge approves the agreement terms, signs your agreement and enters it into your case record. This makes the agreement enforceable by the court.
<u>Enforcement/Remedies</u>	
Eviction order (Order of Eviction)	A court order that allows the sheriff to remove the tenant if they do not comply with the agreement.

Legal Terms and Plain Language Definitions

Judgment for money	Court ruling that the tenant owes rent or other damages to the landlord.
Judgment for possession	Court ruling that the landlord has the right to take back the property.
<u>When a Tenant Files for Bankruptcy</u>	
Automatic stay	<p>When a tenant files a bankruptcy case in federal bankruptcy court, an automatic stay usually goes into effect.</p> <p>This means that the landlord cannot continue with the eviction process or try to collect rent until the bankruptcy court makes a decision.</p>

* These terms are frequently asked/discussed in eviction mediations.