

Dispute Resolution within the Homeowner's Association

By Laurel G. Kaufer, Esq.

In the Homeowner's Association setting, most disputes involve a high level of emotion from some, if not all, of the parties. The Homeowner's Association is a business (a corporate entity) and must be managed as one, but one that is deeply personal to the members of the Association (shareholders) because it involves their homes and their relationships with their neighbors.

One issue where many Associations run into difficulty is in assessing the level of appropriate maintenance warranted for the premises. It is critical that the members understand that the level of maintenance and financial commitment each would deem appropriate for their single family home would likely differ based upon each homeowner's personal priorities and financial situation. In addressing this issue, the members of the Association must also accept that they have chosen to make an investment in property that is mixed private and common ownership. As such, that there will be an expected basic level of maintenance required of the common areas of the premises in order to maintain property values and avoid liability situations, in which all Association members must participate.

In attempting to resolve disputes among Association members, it is important for each individual member to assess his/her personal goals both with regard to the dispute in question and the living community, in order to identify the dispute resolution process, professional and forum most appropriate for resolving the issues.

Frequently Asked Questions:

What is the job of the dispute resolution professional?

- To help the Association understand and identify those issues that are in dispute (this may seem too obvious to consider, but there are often underlying unidentified issues that must be addressed);
- To help each individual member assess his/her goals and ability to participate in both the resolution process and ultimate resolution;
- To help all parties to comfortably resolve the existing disputes, including reaching agreements on the hiring of other professionals (lawyers, accountants, contractors, maintenance companies, etc...) and the scope of work to be performed by each;
- To help the Association set up a formal process to address similar issues in the future before they rise to the level of dispute.

What kinds of dispute resolution professionals are available to assist the Homeowner's Association?

- Lawyer – advocate for a single party in a dispute, helps client accomplish goals by negotiating with others, litigating, advising on contracts, recommending other professional services, etc.
- Mediator – neutral party working with all parties to a dispute with the goal of enhancing communication and understanding of goals in order to bring parties to mutually satisfactory resolution of dispute.
- Arbitrator – a decision-maker who, after hearing all facts and evidence from all parties to a dispute, makes a decision, which the parties have agreed to be bound by. This is a good choice where there are issues, which the members of the Association cannot bring to resolution through any other means, but which must be determined before the Association can move forward and conduct business, and the members do not wish to commit the resources necessary to engage in litigation.

How does the Association choose which type of dispute resolution professional is appropriate for the job?

- Lawyer - This is a good choice if all members of the Association agree on what needs to be done and need an advocate to work on their behalf in resolving issues between the Association and an outside party (i.e. a contractor).
- Mediator – This is a good choice where there are disputes between members of the Association regarding whether and/or how to handle issues both among members and between the Association and outside parties.
- Arbitrator – This is a good choice where there are issues, which the members of the Association cannot bring to resolution through any other means, but which must be determined before the Association can move forward and conduct business, and the members do not wish to commit the resources necessary to engage in litigation.

How much will this cost?

The real answer, as with most disputes is, it depends....

- You may be able to find someone who will quote a flat rate for resolution of the dispute, this will mean that you are either paying too much or too little, depending on the expertise of the professional, which could lead to problems and disappointment. However most professionals are far more likely to quote an hourly rate;
- Know what is included in that hourly rate (meetings, telephone conversations, correspondence, travel time, etc...); and
- Know what the professional intends to do for you.

Who pays for the professional, the Association or the individuals?

Generally, regardless of whether you are involved in mediation, arbitration or litigation, the client is the Association and all members share equally in the cost. The reason for this is that although there may exist disputes between individual members, until those issues are resolved the Association is unable to conduct business appropriately. Further, for the purpose of neutrality, it is more appropriate for the Association to bear the cost, rather than some members and not others. This avoids the potential perception by any parties that the dispute resolution professional has lost neutrality.

On the other hand, where one or several member(s) of the Association has a dispute with other members, rather than the entire Association being at odds, they may choose to hire their own attorneys and bear that cost personally.

What kind of access do you (as an individual) have to the professional?

- Mediator – All parties involved in the dispute have unlimited personal access to the mediator, within reason. It is important to understand before exercising this right, exactly how the mediator charges for his/her time, because you may be unwittingly costing the Association significant fees, if the mediator charges for communications outside of actual mediation sessions.
- Arbitrator – No party is permitted personal contact with an arbitrator, but may communicate only during hearing sessions and through documentary or other evidence.
- Lawyer – Every client* should have unlimited access to his lawyer, but if the fee structure is not contingent or flat rate, the lawyer will likely be billing for every moment spent on the matter. *You must clarify with the attorney at the outset of the representation who the clients are (individuals or Association) and how he/she will deal with individual members of the Association.

What kind of input do you want to have in the resolution of the dispute? Are you comfortable delegating your decisions to another member or do you wish to have complete control over any resolution involving you?

If you wish to have control over the process, mediation is the only appropriate choice for you. As with litigation, where you are subject to the whim of judge and jury, in arbitration, you give up power over the resolution to a decision made by a designated person. In mediation, the only binding decisions are those you and the other parties to the dispute reach of your own accord. Although this process requires more personal involvement of the parties, it is the only one in which the parties are in control of the result, and is the one most likely to end with the satisfaction of all. Clearly, in the Homeowner's Association dispute, as with any dispute involving an ongoing relationship, this is the desired result.

How much time do you have to commit to the process?

- Physical time: This refers to your daily schedule and the amount of time you can commit to work through these issues.
 - Mediation is generally available to you when you are available for it (make sure your mediator is flexible).
 - Litigation is inflexible and is dictated by the court calendar.
 - Arbitration is somewhere in between.
- Chronological time: Length of time you are willing to allow for the resolution process to be completed. All of these choices involve processes that take time.
 - Mediation may take more physical time, depending on the issues to be resolved and motivation of the parties to resolve them, it can be done in lengthy/intense sessions, spread out over time based on the schedules of the parties, or some combination of the two.
 - Arbitration is relatively quick once an arbitrator is chosen and evidence is ready. The time commitment depends on how much is to be decided, but generally it involves only the hearing sessions and the time in which it takes the arbitrator to render an award.

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- Litigation can take a year or more, depending on when a complaint is filed, how many parties and lawyers are involved, and the complexity of the issues. (Keep in mind that most matters presently litigated in the Los Angeles Superior Court are ordered to mediation before trial).

Once you have evaluated the dispute in which you are involved based upon the above criteria, you should be fairly clear on which process and which type of Dispute Resolution professional you are most interested in retaining to assist you in resolving your dispute.