



A CARE-ing APPROACH TO MEDIATION
BY: MARC BHALLA
SPRING 2014

Mediation offers tremendous value in a condominium setting when parties in dispute are required to co-exist in that community, as mediation presents an opportunity to consider that ongoing relationship. Structuring a plan that sets expectations for future interactions may, for example, offer an advantage, even if the dispute is destined to be ongoing for years to come.

While condominium corporations are, in some ways, like any other party participating in mediation, in other ways they are different beasts entirely. Accordingly, it's important for condominium corporations to take appropriate steps to prepare. The following considerations will help to ensure a condominium board makes the most out of mediation.

Contemplation

An advantage of mediation involves bringing those in conflict together to discover, express and share different perspectives, insights and ideas. As a result, a condominium board can't always know in advance the kinds of options that may be presented for resolving a matter. Novel approaches can come to light in the course of a brainstorming session as momentum is gained through the conciliatory approach.

That being said, there is no harm in the condominium board first doing some creative thinking on its own. Think about some options that the condominium board may want to put forward and how it will reply to any that it may expect from the other side. It's here that a condominium board can leverage the minds of those who will not be directly participating at the mediation. A discussion in advance can go a long way in terms of preparation and also serve to clarify the goal of mediating.

Anticipation

Many parties have not previously had much (or any) experience participating in mediation and may not realize that the process can vary significantly. Common concerns may include what to expect, who will be in attendance or what exactly the role of the mediator is. This writer has long advocated the idea that parties can accomplish more when they are comfortable as they mediate; clarifying stress-inducing questions beforehand can go a long way in preventing or reducing anxiety and sleepless nights leading up to mediation day.

Representation

In many instances, not all members of a condominium board will participate in the mediation session. There are several reasons for this – scheduling issues, perceived power imbalance concerns, even a lack of desire to participate; however, it's important for a board to carefully consider who will represent the condominium at mediation. Instructing a property manager to “go it alone” or hand-selecting a particular director as the appropriate representative based upon the specific circumstances of a dispute are not unusual approaches, yet the approach taken can drastically impact how the mediation plays out.

Choosing the appropriate person to represent the condominium corporation at mediation involves taking into account whether an individual has the authority to make decisions or settle, their knowledge of the dispute, and their past and future relations with the other parties.

Exploration

While it may initially seem contradictory, there is value to be gained in preparing for mediation by investigating and assessing a condominium board's options should mediation fail to resolve the conflict. Taking the time to properly understand the reality of a condominium board's situation (and those of others involved) ensures that the most appropriate decision is made as options are generated and considered through the course of mediating.

Settlement only makes sense if it presents a better outcome than the condominium board's next course of action to address the dispute. All too often, parties risk making uninformed decisions by relying on assumptions about their alternatives – including the time, cost and chance of success involved in proceeding to court, their legal rights and obligations, and the impact that prolonging the resolution of the conflict will have on them.

Similarly, the Condominium Act and/or the condominium's declaration, bylaws and rules can impose limits as to the resolution. It's helpful to be aware of such parameters going into mediation to avoid wasting time and money.

A conciliatory approach to conflict

Increasingly, the courts are directing condominiums to embrace a conciliatory approach to conflict, to attempt to mediate unless there is good reason not to. Whether it is mandatory to do so or otherwise, mediation presents an opportunity for condominium corporations. The “C.A.R.E.” process set out above can help ensure that a condominium board is sufficiently prepared to capture that opportunity.

This article was originally published in the March 2014 edition of Condo Business magazine

Marc Bhalla, Hons. B.A., Q. Med. has serviced the condominium industry since 2002. He holds the Qualified Mediator (Q. Med.) designation of the ADR Institute of Canada.

Marc holds an Executive Certificate in Conflict Management from the University of Windsor's Faculty of Law (Stitt Feld Handy) and earned an Honours Bachelor of Arts at the University of Toronto (Trinity College). He actively manages condominium conflict and advocates for mediation in the early stages of condominium disputes.

Marc brings unique insight in mediating condominium conflict through the knowledge and experience he has gained as a condominium director, resident and law clerk. His mediation practice is focused on condominium disputes.

Marc sits on the Board of Directors of the Toronto & Area Chapter of the Canadian Condominium Institute and is a member of the ADR Institute of Ontario; the ADR Institute of Canada; the Toronto & Area, Golden Horseshoe, Huronia and London & Area Chapters of the Canadian Condominium Institute; the Association of Condominium Managers of Ontario and the Institute of Law Clerks of Ontario.



 facebook.com/condomediator

 twitter.com/condomediator

 ca.linkedin.com/pub/marc-bhalla/27/731/b47



E-mail: mbhalla@elia.org

Phone: Toll-Free: 866.446.0811, extension 811

CONDOMEDIATORS.ca

All of the information contained in this article is of a general nature for informational purposes only, and is not intended to represent the definitive opinion of the firm of Elia Associates on any particular matter. Although every effort is made to ensure that the information contained in this article is accurate and up-to-date, the reader should not act upon it without obtaining appropriate professional advice and assistance.