



HOW CAN CONDOS MEDIATE? BY: MARC BHALLA DECEMBER 2013

When presenting at the ADR Institute of Canada's national conference, I shared the story of a non-resident unit owner who inadvertently escalated a conflict. His misguided attempt at a conciliatory approach found him knocking on the door of the President of the Board of Directors one evening. The surprise interruption of family dinner by an individual who was essentially a stranger was not appreciated; nor was the President's lack of interest in resolving the matter while standing at his front door. This incident could well be viewed as a primary reason why the conflict between owner and condominium will likely see two winter Olympics come and go from start to finish!

When a condominium corporation is directly involved in conflict, it is not uncommon for confusion to exist as to how the matter can be addressed – both in terms of communication and representation. Many do not appreciate that a condominium corporation can only conduct business at duly constituted Board meetings, which typically take place no more than once a month. A lack of appreciation as to how condominiums operate can contribute to ill will and feelings of neglect as silence and the passage of time can be interpreted as a lack of desire to address an issue. Such can result in missed opportunities to address matters quickly and cost effectively.

Mediation presents an opportunity to prevent misunderstandings and misperceptions contributing to the escalation of conflict; however, when a condominium corporation is a party to the dispute, how does mediation work?

Representation

Having an entire Board of Directors at the other end of the table can be intimidating and difficult to arrange, yet the participation of the condominium's lawyer or property manager alone does not provide for direct communication with those who make decisions.

In practice, Boards often present one or two directors to represent the condominium corporation in a mediation session. This can allow for direct interaction between parties in conflict by "putting a face" to the Board and providing someone in conflict with the condominium a chance to feel heard.

Authority

In addressing perceptions of power imbalance and practical scheduling concerns by having only one or two representatives of a Board of Directors take part in mediation, do we not create issues with a condominium corporation's authority to make decisions? Perhaps, yet this can be addressed.

In advance of the mediation, the Board of Directors can authorize its representatives to have authority to settle at the mediation. Often, such authority is provided with parameters that can pose challenges for the consideration of "outside the box" options that can emerge in the course of a creative brainstorming session. There are a few different ways to address the concern of a resolution reached in good faith being vetoed by non-participants to the process:

- a. The mediation could be structured to take place over the course of multiple sessions, allowing a Board of Directors time to gather and all parties an opportunity to reflect and seek additional information and advice as warranted;
- b. The non-participating directors can arrange to be available for consultation during breaks in the mediation session (i.e. by telephone) to approve or otherwise comment on options and developments; or
- c. The participating directors can be provided with full authority to settle at the mediation without any parameters. This option may only work for certain Boards, yet is an effective means to address concerns of non-participants failing to understand the dynamics at play or de-railing momentum that is built in the course of the mediation. This can be structured in a similar manner to the approach that many Boards take in respect of litigation by appointing an officer with full authority to provide instructions and make decisions between Board meetings.

While Boards are wise to consider the nature and scope of authorization, perhaps the most significant aspect of this is not the degree of authority that is provided to those participating but rather the communication of the limits of such authorization to the other party at the outset. Such communication can avoid perceptions of bad faith emerging in the event that the parties appear ready to resolve the conflict yet face a delay as, for example, the condominium's representatives need the Board to ratify settlement terms.

Resolution Parameters

Just as communicating the scope of settlement authority provided to those participating on behalf of the condominium can prevent surprises that risk escalating the conflict, so too can making sure that all participants are aware of resolution parameters put in place through the existence of the *Condominium Act, 1998* and the condominium's Declaration, By-laws and Rules.

To the extent that compliance of a proposed resolution may need to be verified by a lawyer, it can be helpful for parties to know this in advance rather than finding out only after they understood the matter to have concluded.

Scheduling

It must be appreciated that directors are typically volunteers with other commitments in life; directors and owners alike are often not readily available to participate during normal business hours, thus consideration should be provided to scheduling mediations outside of them.

While mediations typically require access to two private rooms where parties can be uninterrupted, many condominiums have appropriate facilities on their premises to conduct mediations. Not only can this be a convenient location, it can also keep costs of mediation minimal.

Future Interactions

Regardless of whether mediation results in the resolution of the dispute, often in the condominium context parties must continue to exist in community. Particularly when a condominium corporation is a party to the dispute, this almost always means that some form of future interaction is inevitable. Accordingly, mediation provides the opportunity for parties to get “on the same page” in respect of their future interactions. This can include establishing the appropriate way to communicate (so the President can have his dinner in peace) and setting reasonable/realistic expectations of response timelines.

Mediation presents a great opportunity for parties to address conflict, particularly when a condominium is directly involved in the dispute. However, the nuances of how condominiums operate can easily give rise to the escalation of conflict. Taking the time to communicate the structure of mediation and the role of participants representing a condominium thereat can help parties make the most of the opportunity.

The concept of preventative maintenance is one that many condominiums embrace. The notion of investing proactively rather than waiting and reacting can not only save cost, it can save time and uncertainty. Preventative maintenance need not be limited to physical property; it can apply to people in the community as well.

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.