



WHY USE A CONDOMINIUM MEDIATOR? BY: MARC BHALLA FEBRUARY 2013

There are differing views as to the degree of specialized knowledge that a mediator should have in respect of the subject matter of a dispute. Unless some form of evaluative mediation is involved, this stands to reason. As the mediator is not imposing any decisions upon the parties or providing any advice, some question the need for specialized knowledge.

In the condominium context, it is worth considering the premise that anyone mediating a community based condominium dispute should have “condominium knowledge”. This includes an appreciation of condominium-focused legislation, current and landmark case law and an understanding of how condominiums “work”.

There are several reasons for this:

1. **Boundaries of potential resolution.** As parties review their options and consider potential resolutions to their conflict, it is essential that they recognize that settlement options are not limitless, but that resolution must be found within the four corners of the *Condominium Act, 1998* (the “Act”). The Act cannot be ignored, nor can each condominium corporation’s unique Declaration, By-laws or Rules. While this is particularly important if the condominium corporation itself is a party to the dispute (as the condominium cannot “contract out” of the Act), such limits apply to all governed by them.

It is not the role of the mediator to provide a legal opinion as to the validity of settlement options; however, it is economically unrealistic to expect parties who have mediated to then incur further costs for a legal opinion which tells them that their mediated settlement, reached in good faith, was for naught. A mediator with sound condominium knowledge can assist the parties in being better aware of the limits imposed upon them and in appropriately ratifying/adopting a potential settlement.

2. **Empathy.** A mediator’s ability to understand what a party in conflict (particularly a community-based conflict) is going through is important for the process to be effective as it builds the trust and comfort required to uncover and address the underlying interests at hand. A mediator who appreciates that condominium units are not apartments, understands that unit boundaries differ by condominium and knows that a condominium’s reserve fund cannot be used to pay for “anything” is better equipped to appreciate what the parties are going through.
3. **Consequences.** Often in the course of mediation, parties examine their Best Alternative To a Negotiated Agreement, known as their “BATNA”. If a conflict is worth resolving, an

available settlement option simply has to be more appealing than the next course of action to address the dispute. An effective mediator asks provocative questions, challenges the parties to think outside the box and encourages them to truly consider if settlement is viable. A mediator who appreciates the impact that various options may have on a condominium community can ask the questions that are important for the parties to consider.

Condominium disputes are unique. Someone qualified to facilitate the mediation of condo conflict appreciates that such disputes are distinct in nature yet also that each is different. Condominiums vary by community, from the make-up of governing documents to the “personality” created by the people. When condominiums face conflict, there is genuine benefit to reaching a fast, creative and cost effective resolution that serves to strengthen and foster the ongoing relationship of the parties, and, indirectly, the well-being of the community as a whole.

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Marc actively manages condominium conflict and advocates for mediation in the early stages of condominium disputes. He earned an Honours Bachelor of Arts at the University of Toronto (Trinity College), holds an Executive Certificate in Conflict Management from the University of Windsor Faculty of Law and is a member of the ADR Institute of Ontario, the ADR Institute of Canada, the Toronto & Area Chapter of the Canadian Condominium Institute, the Association of Condominium Managers of Ontario and the Institute of Law Clerks of Ontario.

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 exclusively on condominium disputes.

Marc Bhalla carries professional liability insurance and is a regular contributor of articles to **CONDOCENTRIC.ca**



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