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Impact of Senate Bill 06-089 on Dispute Resolution between Associations and Unit Owners

Section 5, paragraph (1) (b) of recently enacted Senate Bill 06-089 reads as follows: “On or before January 1, 2007, each association shall adopt a written policy setting forth its procedure for addressing disputes arising between the association and unit owners.” Paragraph (1) (a) of the same Section states: “The general assembly finds and declares that the cost, complexity, and delay inherent in court procedures make litigation a particularly inefficient means of resolving neighborhood disputes. Therefore, common interest communities are encouraged to adopt protocols that make use of mediation or arbitration as alternatives to, or preconditions upon, the filing of a complaint between a unit owner and association in situations that do not involve an imminent threat to the peace, health, or safety of the community.”

The new law means that homeowners’ associations will need to have written dispute resolution procedures enacted by the first of next year. Most people understand the use of the courts to resolve disputes (even though the judicial process may be expensive and time-consuming), but many people are not as familiar with these “alternative dispute resolution” (ADR) procedures. We will define these procedures and then discuss the benefits of using them instead of, or before, going to court.

ADR procedures range from simple (and less expensive) to complex (and more expensive), from unassisted negotiation, to facilitated discussions or mediation and, finally, arbitration. Parties who participate in these processes do not give up any legal rights, and they may engage legal counsel to assist them.

Negotiation: Bargaining between parties who have a perceived or actual conflict of interest. The participants voluntarily meet to educate each other about their needs and interests, to exchange specific resources, or to resolve one or more intangible issues. It is a more intentional and structured process than the informal discussions often used to solve problems.

Facilitation: Use of a trained, acceptable, neutral third party to assist parties in constructively discussing issues of mutual concern. This is especially useful where larger numbers of people are involved. The facilitator helps the parties in managing conflict, and records significant elements of the discussion. If the parties are actually in a dispute, the facilitator may help them to clarify points of disagreement.

Mediation: An extension and elaboration of the negotiation and facilitation processes, involving the intervention of a trained, acceptable, neutral third party (with no decision-making power) to assist contending parties in voluntarily reaching their own mutually agreed-upon settlement of issues in dispute.

Arbitration: A process in which people in conflict use an impartial and neutral outside party to make a decision for them regarding contested issues. Parties must present evidence, and the arbitrator’s decision may be advisory or binding. Arbitration of a dispute may be required by contract or by an agency in authority, such as the courts, and such arbitration would usually be binding.

Professional Qualifications: An association’s written ADR procedures should include specific guidelines for selection of mediators, facilitators and arbitrators. Mediators and facilitators, besides being trained, should have significant experience in the actual practice of these disciplines prior to being selected. Since arbitration is much like a private court procedure, associations may also wish to include qualifications for arbitrators, who may be selected from a number of independent practitioners or from arbitration associations.

ADR procedures have several advantages over traditional court procedures for resolving disputes.

1. **Time savings.** Crowded dockets mean that court dates are often set months in the future, and conflicts can escalate during that time, while ADR procedures can often be scheduled within days.

2. Cost savings. Court procedures are often complex, and attorney expenses may result in large legal bills for a relatively small conflict. ADR professionals charge hourly fees (as do attorneys), but the process requires fewer hours, and the complexity is often reduced to one session.
3. Finally, and perhaps most importantly, ADR procedures such as facilitation and mediation result in healing, rather than damaging the ongoing relationships essential to the functioning of an association, and they reduce the potential for future conflict. The use of ADR nearly always saves time and money, while preserving community relationships. Reliable statistics show that mediation of neighborhood disputes results in acceptable solutions at least 90% of the time. Clearly, an association that uses mediation or facilitation, as the law suggests, will profit in many significant ways, not the least of which is community peace and harmony.

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