

LEGAL



Dispute Resolution

BY MARK FRIEDMAN, FLORIDA BAR CERTIFIED AS A SPECIALIST IN
CONDOMINIUM AND PLANNED DEVELOPMENT LAW

When there is a dispute with unit owners, there are different ways that seeking compliance can be handled.

Arbitration

When a unit owner fails to follow the provisions of the governing documents or rules of the Association, the Association may wish to force compliance through arbitration. To begin the process the unit owner must be sent a demand letter stating the nature of the violation and must be provided with a reasonable timeframe to cure the violation before arbitration may proceed. The notice must also specifically state an intention to file for arbitration if resolution of the dispute is not forthcoming. If these prerequisites are not complied with then the case will be dismissed without prejudice. If the case proceeds, the prevailing party is entitled to seek recovery of its reasonable attorney fees and costs. Arbitrators are not judges; they are usually retired judges, private at-

torneys, or government employees. Arbitration is much like a court trial in that there is a winner and loser, although the steps before arbitration are usually much less complex than in court proceedings, including limited "discovery," such as depositions. Arbitration can either be binding on the parties (usually agreed to by the parties in a contract) or non-binding.

Mediation

In mediation, the "mediator" does not act like a judge but as more of a facilitator who tries to see if he or she can bring the parties together to settle the dispute. There is no winner or loser, either the parties mutually agree to a settlement, or the mediator declares an "impasse."

In 2021, the Condominium Act was amended to allow a party seeking redress to also offer mediation to resolve the dispute. If a dispute is not settled by mutual agreement through mediation, either party has the right to proceed

with a lawsuit in court. Under the statute, both sides pay half of the mediator's fees. The idea is that the parties get to craft their own settlement, rather than an arbitrator or judge doing so. It is said that the best mediations are the ones in which both sides walk away unhappy, because both had to give something to find middle ground.

What is a "dispute" under the Statute?

The term "dispute" under the Condominium Act means any disagreement between two or more parties concerning the board's authority to require an owner to take (or refrain from taking) action related to their unit or limited common elements and disagreements regarding the alteration of or addition to common elements. The term also includes issues related to the association's management of elections, meeting notices, meeting conduct, and access to books and records.

The term "dispute" does not cover issues related to the title of any unit or common elements, warranty interpretation or enforcement, the levy or collection of fees or assessments, eviction or removal from a unit, breaches of fiduciary duty by directors, or claims for damages to a unit due to the association's failure to maintain common elements or condominium property. These matters must be adjudicated directly in court.

Mark D. Friedman, B.C.S. is recognized by the Florida Bar as a specialist in Condominium and Planned Development Law. This article is intended for educational purposes only and is not intended as legal advice. If your Association has a dispute with a unit owner, you should contact your Association's legal counsel. Mr. Friedman may be reached at MFriedman@BeckerLawyers.com.

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