

RESOLVING DISPUTES BETWEEN CONDOMINIUM OWNERS OUTSIDE THE COURTROOM

Alternative Dispute Resolution (ADR) includes both mediation and arbitration.

Florida law requires all associations to have a provision for "mandatory nonbinding arbitration" to settle disputes.

Mediation is the usual first step in ADR.

Arbitration is similar to litigation; usually, one party wins, and the other loses.

Associations and residents must learn the rules that govern ADR.

While it's generally true that "good fences make good neighbors," sometimes even well-constructed barriers aren't long enough or high enough to prevent conflict among residents of condominium communities and their governing associations. It stands to reason that conflicts are more likely to occur among homeowners who live in close proximity to one another, share ownership of common elements, and are subject to stricter-than-usual limits on their property rights than those who live in traditional single-family homes. And it serves the interests of no one when parties in dispute clog the court system with costly, time-consuming litigation over homeowners' rights.

That's why the State of Florida's Division of Condominiums, Timeshares, and Mobile Homes (the Division) has established a statutory framework for methods of Alternative Dispute Resolution (ADR), including both mediation and arbitration, that take place outside a courtroom. In fact, the Division requires all condominium associations to have a provision for "mandatory nonbinding arbitration" in their bylaws. The statutory provisions generally apply to disputes over whether a condominium board has properly exercised its authority or has failed to perform its duties; disputes between individual condominium unit owners that do not involve the association are outside the statutory scope of Division-sponsored ADR.

The usual first step in settling disputes that fall under the State's ADR provisions is voluntary mediation at a state-authorized Citizen Dispute Settlement Center. The mediation process is based upon negotiation and problem solving. It promotes the building of closer relationships and can result in "win-win" outcomes. Settlements are entered into voluntarily, and the information disclosed during the mediation is generally confidential.

Should mediation prove unsuccessful, or if the parties in dispute choose to bypass mediation, the next step in the process is arbitration. Arbitration can seem very much like going to court because it is an adversarial process, with attorneys representing each side. In contrast with mediation, arbitration is relatively formal, has procedural rules, and may result in a binding decision in which one party wins and the other loses. The Division employs full-time attorneys to act as arbitrators, who aim to resolve condominium-related disputes before they turn into lawsuits. In some cases, parties in dispute *must* file a petition to participate in nonbinding arbitration before they are permitted to file a lawsuit in court.

Both mediation and arbitration proceedings must be conducted according to Division rules that address such topics as legal representation, discovery and presentation of evidence, enforcement of awards, etc. That's all the more reason for condominium unit owners and the associations that govern them to school themselves on state-mandated ADR procedures. After all, good neighbors should sit next to each other at a poolside, not across from one another in a courtroom.

COURSE FEATURES INCLUDE:

- ❑ Self-paced learning
- ❑ Clear, concise explanations of ADR procedures as they apply to condominium associations
- ❑ Links to definitions, questions and answers, case law, and documents
- ❑ Appealing graphics

