



PLACET
dispute resolution

Principles in Practice:

Using ADR Principles to Keep Your Corporation and Community in Balance

The principles that both guide the mediation process and led to the proliferation of ADR in the formal legal system can both inform and lead condo community members as they struggle with disputes that arise in their community.

It is widely accepted that ADR methods are guided by some of the following principles:

- Voluntary participation
- Timely resolution
- Good faith
- Confidentiality
- Self determination

What can you do as a property manager, board member, unit owner or tenant to support these principles and contribute to the effective resolution of disputes?

Voluntary Participation: It is human nature to fear the unknown. As a member of your condominium community, you are in a unique position to share information and ideas about mediation and other alternative dispute resolution processes. An article in the newsletter, presentations at meetings and other media will gently introduce both the process and the community's commitment to it long before a dispute arises. People who are familiar with the principles of mediation, even if they lack experience with the process, will be much more willing to give it a try.

Timely Resolution: We all know the damage that can be done when a dispute is left simmering too long. Motivation for resolution starts to wane; bad feelings start to harden. Property managers are the gate-keepers to the timely resolution to disputes! Do you have what it takes to resolve problems as they arise and before they boil over? If not, consider asking a local mediator or dispute resolution practitioner to come out and train your frontline professionals on how to resolve disputes in a timely manner. Check with your property management company as well. They might already offer this training.

Good Faith: In many disputes, one party often has little motivation to come to the proverbial “bargaining table”. Most times, this is unmotivated party is the board and/or the property manager. After all, the unit owner is the one who is supposed to comply with the declaration, rules and bylaws! The corporation pays lawyers to assist with these very things. Why should we have to “bargain”? This scenario represents a common barrier to dispute resolution. Good faith holds that where both individual and altruistic (or community) interests co-exist, that altruistic interests should dominate. While the board or property management team may not be motivated by personal interest to invest in the process of early resolution, a strong commitment to the overall wellbeing of the community as a whole should prevail.

Confidentiality: Confidentiality can be a difficult principle to manage, particularly in the early days of a conflict. Condominium communities by their very nature are dynamic and the roots of the words “community” and “communication” are shared. Often times, parties to a dispute, particularly when they are also residents, are tempted to share stories and experience aloud. While this is normal, a little discretion can go a long way! While not everyone will abide by this principle, embracing the principles of confidentiality and discretion prevent disputes from being judged in the court of public opinion.

Self Determination: The principle of self-determination speaks to a party’s ability to choose what they feel is an appropriate course of action with compulsion. As useful as more coercive dispute resolution options might seem (i.e. litigation), they fly in the face of giving all parties to a dispute a choice to resolve their problems on their own terms. While the Condominium Act does require that most cases specific process be attempted, none of these necessarily bar earlier, more informal attempts at finding common ground and meaningful solutions. Research has proven that solutions crafted by the parties themselves, as opposed to those imposed upon them, lead to more durable resolution that require less subsequent enforcement.

A few final thoughts....

*Strong community ties are a more effective deterrent than the threat of sanctions.
Approaches should promote positive behaviour, not just penalize infractions.
Practical, feasible solutions should be pursued, rather than abstract judgment on principle or fault.
To the extent that blame is relevant, it should be limited to events, not character.
Losers are always looking to being transformed into winners.
Mediation will only succeed as much as the parties want it to. How invested are you in a positive outcome?*