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Alternative Dispute Resolution

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Has the owner of a neighboring unit in your condominium building refused to address your complaint about his dog's incessant, late night barking, or strong cooking odors or cigarette smoke emanating from his unit? Has your condominium association notified you that it is imposing a fine due to your own alleged violation of its rules and regulations? New Jersey law requires condominium associations to offer alternative dispute resolution, commonly called "ADR," in these and similar situations. In specific, the New Jersey Condominium Act requires a condominium association to "provide a fair and efficient procedure for the resolution of housing-related disputes between individual unit owners and the association, and between unit owners, which shall be readily available as an alternative to litigation."

The principal purpose of ADR is to offer owners a method of resolving disputes between themselves, and with their association, that is more informal, expedient, and efficient than lengthy and potentially expensive litigation. Every association is permitted to design its own ADR procedures, as long as they are "fair and efficient." An association must make ADR available in applicable cases even if its master deed and by-laws do not mandate it.

The two main forms of ADR are mediation and arbitration. In mediation, a neutral person who has no interest in the outcome – the mediator – will discuss all aspects of the dispute with the parties and attempt to guide them towards a mutually acceptable solution, but will not render an actual ruling. Arbitration involves a hearing, similar to a trial, in which the parties offer testimony of witnesses and other evidence, are subject to cross-examination, and receive a written decision of the dispute by the arbitrator. Unit owners are not required to be represented by counsel during ADR, but may choose to do so at their own expense. ADR is non-binding, so a party who is not satisfied with the result retains the right to pursue the matter in court.

Under the Condominium Act, the mediator/arbitrator may not be the association's board of trustees, an individual officer or board member, or a unit owner involved in the dispute. Therefore, many larger associations maintain a "Covenants Committee" comprised of unit owners willing to serve as mediators/arbitrators. Although most boards appoint their association's mediators/arbitrators, the New Jersey Department of Community Affairs (DCA) recommends that a separate homeowners committee handle that responsibility to better assure impartiality. The New Jersey Chapter of the Community Associations Institute, whose website is www.cainj.org, will provide a mediator for a modest fee and also offers mediation training. Although a board is not allowed to conduct the initial ADR proceeding between two unit owners, a board may hear an appeal.

Who pays for ADR? For years, the DCA's position was that an association was required to provide the first round of ADR at no cost to the unit owner. In 2006, however, a New Jersey appellate court upheld the legality of an association policy that required payment of a \$150 deposit by a unit owner seeking ADR, with the cost of ADR ultimately to be split by the parties.

An association is not legally required to provide ADR for all disputes with a unit owner. In 2006, homeowners challenged their association's refusal to provide ADR for some types of disputes. A New Jersey appellate court ruled that ADR was not required for every disagreement between owners and their associations, but only if a unit owner claims that an association's act "imposes a special harm" on the owner, as opposed to general harm to the association. Therefore, the court upheld the association's ADR policy that excluded disputes involving a unit owner's non-payment of assessments, alleged non-compliance by the association or board with the governing documents or applicable law, and election issues (except the suspension of a unit owner's right to vote, for reasons other than non-payment of assessments or fines).

A unit owner's participation in ADR is strictly voluntary and cannot be compelled by the association or another unit owner. An association must participate in ADR if requested by a unit owner in an appropriate case, but, as a New Jersey appellate court ruled in 2007, a unit owner is not required to engage in ADR as a prerequisite to suing an association. Tenants are not entitled to ADR.

To commence ADR, a unit owner should make a written request to the association and be sure to adhere to its procedures. A unit owner should thoroughly prepare for an ADR proceeding, and produce all evidence, such as photos, documents, and witnesses, which support the unit owner's position. While it is understandable that emotions sometimes can run high, a unit owner should remain calm and courteous in presenting his case, in order to maximize the possibility of a positive outcome. ADR can prove to be a low cost, speedy means of resolving disputes that arise in condominium association living.