



CAMBERWELL HOUSE SOLUTIONS

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MEDIATION, ARBITRATION AND CONDOMINIUMS: Information Session Summary For Condo Boards

Introduction

This Information Sheet is for condominium owners, board members and property managers to provide them with an introduction to:

- the ADR (**A**lternative **D**ispute **R**esolution) requirements of the *Condominium Act, 2001*;
- ADR itself, including arbitration, mediation and the role of the court system; and
- condominium ADR services provided by Camberwell House Solutions.

The New System

In 2001, the *Condominium Act* was changed significantly: the old system for summary applications to courts was replaced by Section 132 of the new Act, which effectively inserted an ADR provision into every condominium declaration in Ontario. Under this provision, most disagreements amongst condominium developers, owners, boards and managers regarding the corporation's declaration, bylaws and rules must be resolved cooperatively through mediation or arbitration. The underlying idea is that a condominium is a community of people with common interests who are better off solving their own problems without involving the court system, thereby avoiding a process which is slow, adversarial, expensive and not possessed of an understanding of the needs or particular background of that given community.

Under Section 132, a condo corporation can still seek to enforce compliance with its declaration, bylaws and rules through normal cooperation, letters and formal notices. What it *cannot do* is go directly to court for enforcement. Section 132 mandates a three-step resolution process: (1) mediation, (2) arbitration (if mediation is unsuccessful or impossible),



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and (3) a compliance order from court if there is no compliance with the arbitrator's decision. This ADR mandate can fairly be called "new" because many condo boards and owners are still unaware of it, even seven years after its implementation; even effective and knowledgeable boards are often uncertain about Section 132's extent and importance.

What's "ADR"? What's "Mediation"? What's "Arbitration"?

Alternative dispute resolution (ADR) is the resolving of disputes through means other than the intervention of courts or tribunals, which are more expensive, slower, fixed in structure and form, and do not have any client input into their processes.

- ***Mediation*** is where an agreed third party helps others to reach a mutually agreeable solution to a dispute. There are many styles of and approaches to mediation.
- ***Arbitration*** is where parties to a dispute agree to resolve it by referring it to an agreed-upon person to whom they present their views and evidence and by whose decision they agree to be bound.

Unlike the court system, which fits parties into an extremely structured system, ADR allows clients to play key roles in designing how their dispute will be resolved: quickly, effectively, and less expensively than court.

What condominium situations are covered and which aren't?

As condominium owners and managers know, most compliance cases arise out of "people, pets, and parking" -- disagreements over or infringements of the declaration, bylaws and rules of the condominium corporation are common problems. These cases are now subject to mediation and arbitration, as are, for instance, agreements between two or more condo corporations (*e.g.*: shared facilities agreements), property management agreements, and dissenting owners' rights on sale of part of the condominium property.

Some disputes don't fall within this mandatory ADR stream. For example, oppression claims, disagreements regarding the Condominium Act itself, property assessments, enforcement actions against tenants of a condo unit, or third party supplier disputes are all still handled by



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the normal court or tribunal systems. A condominium may use ADR to handle some of these situations -- for example, it may have an ADR contract or clause with its suppliers mandating arbitration rather than Superior Court actions -- but the Act does not mandate that.

What's the cost of mediation? Who pays it?

The cost of the mediator and the process itself will depend on the mediator's rates, the cost of any disbursements, the complexity of the case and how long the process takes. The Act specifies that each party shall pay a share of expenses as specified by the mediator. The parties can, by agreement or bylaw, set a system which fixes how this will be done.

What's the cost of arbitration? Who pays it?

Parties to an arbitration will incur costs as they prepare and present their case. An arbitrator has authority to award what are called "costs" to one side or the other, meaning that he can order that all or part of the costs incurred by one party be paid by another. An ADR bylaw can clarify how costs are awarded. (For example, two condominiums arbitrating a shared facilities agreement may wish to set a specified division of the costs for good faith dispute resolution determining things that they are uncertain about.) The cost of an arbitration will definitely be higher than those of a mediation, and can be quite high if the dispute is lengthy and complex. Unlike court, however, such costs can be minimized by the parties themselves through a bylaw or subsequent agreement(s) as to how the arbitration will proceed. The arbitrator may assist in structuring those processes, or the earlier mediator may play a role, helping to craft an agreement on the arbitration process (including agreed facts, documents at issue, *etc.*) even though one is not possible on the substance of the dispute itself.



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Planning Ahead: Why do you need an ADR Bylaw?

Every condominium should have an ADR bylaw in place and ready to handle future disputes. The condominiums that will be most reluctant to plan ahead are naturally those where there is little to no conflict now. Sadly, in the words of the song, “nothing beautiful lasts”: no happy situation is permanent. Boards change, management companies change, owners change, and so, over time, do the buildings. Boards, owners and property managers should plan for the future and have a functioning ADR plan in place. Waiting until a dispute arises is ill-advised, given that such a later dispute may lead to bad feelings which will prevent the very cooperation necessary to effectively design the most effective and cooperative process.

Other topics in the Information Session

- ADR Bylaw: drafting and design.
- What are the drawbacks of the new Act?
- The current state of the law: what have the courts had to say?
- Selecting a mediator
- Selecting an arbitrator
- Is the law going to change and where might it go?

What can Camberwell House Solutions do for you?

- Provide a low-cost, high-value Information Session on “ADR: What You Need to Know” for condominium owners, Boards and property manager.
- Provide an ADR plan and bylaw framework and work with your Board and owners to ensure that it is tailored to your specific needs.
- Provide David Sanders to act in any dispute resolution capacity: informal negotiator, designated mediator or designated arbitrator.

Camberwell House is ready to provide Solutions for You.