

Before Litigation, Community Associations Should Consider Mediation

By Kevin L. Britt and Elizabeth Demong

In his forward to a 2000 collection of case studies compiled by the Carnegie Commission on Preventing Deadly Conflict (CCPDC), former Secretary of State Cyrus R. Vance called for an international effort to improve the existing methods of preventing and resolving deadly conflict.¹ While conflicts within condominium and homeowners associations involve lower stakes than the types of situations that Mr. Vance has faced (he played a major role in the negotiations to end apartheid in South Africa and end the Bosnian War), they can still get plenty ugly once litigation rears its head. Fortunately, community associations and owners with opposing interests can often successfully mediate their disputes, even if there is substantial bad blood between them. Mediation is particularly appropriate in that context because it seeks to reconcile parties and rebuild a sense of connection between them. After all, everyone still has to live and work together once the dogs of war have been chased away.

Disputes between community associations and owners can escalate rapidly. Consider this hypothetical situation:

A condominium unit owner stores items on a second-floor balcony in clear violation of the community's rules. The board sends a violation notice to the unit indicating that daily fines will be imposed if the items are not removed by a specified date. When the deadline comes and goes without the items being removed, the board begins to charge daily fines. The owner arrives home from an extended trip to find that \$3,000.00 in fines has been imposed. The owner removes the items from the balcony, but the board is not willing to remove any of the fines. Both sides come away from a meeting regarding the fines convinced that their position is correct. The board sends the owner a letter stating that it will sue her if she does not pay the fines.

Absent the intervention of a third party, the association and the owner in this hypothetical will likely spend many months and thousands of dollars engaged in litigation. Regardless of the outcome in court, the parties will almost certainly regard each other with hostility from that point

forward, which will probably lead to more disagreements. This unfortunate outcome is inevitable in some cases, but mediation should be seriously considered before litigation is pursued.

Mediation is an informal process in which two parties hire a neutral third party to help them resolve a dispute. A mediator does not typically express views on the merits of the parties' positions. A mediator's primary goal is to help the parties reach agreement by identifying issues, exploring possible basis for agreement, describing the consequences of not settling, and encouraging each party to consider the interests of the other party. Both sides are encouraged to compromise. Mediation can usually resolve disputes faster and cheaper than litigation, and it has the potential to make future disputes less likely by restoring the parties' long-term relationship.

In his forward to the CCPDC's report, Mr. Vance concedes that it is difficult to negotiate with people one dislikes. He writes that as "much as I might have been repelled by the acts of many of the leaders with whom I negotiated, they were the only men empowered to make peace, and peace in the end was the most important goal."ⁱⁱ Community associations and owners likewise may not always hold one another in high regard, but this does not preclude successful mediation of their disputes.

When reflecting on his involvement in the negotiations to transfer power from the white minority to the black majority leader in the 1990s, Mr. Vance describes a negotiation in which South Africans "sought out areas of agreement with the other side and worked together on a process of power sharing and reconciliation."ⁱⁱⁱ He praises those who showed "leadership...[which]...allowed for the truth of the apartheid years to emerge in a way that encouraged catharsis and honesty without vengeance."^{iv} Seeking common ground, facilitating open communication, and foregoing punitive measures were vital because the citizens of South

Africa still had to live together in close proximity after the transfer of power took place. Mediation can similarly help community associations and owners end disputes in a way that will sow the seeds of future peace between neighbors.

Conflict between community associations and owners will happen from time to time, and occasionally litigation is necessary to resolve it. However, mediation often offers a better path. By agreeing to negotiate solutions with the assistance of a mediator, associations and owners can in many instances reach settlements that reflect the interests of both sides and, as a result, produce real and lasting reconciliation.

Kevin Britt is a Seattle attorney who focuses his practice on condominium and homeowners associations. He can be reached at (206) 420-0021 or kevinbritt@gmail.com. Kevin writes about issues relating to community associations at <http://seattlecondoattorney.blogspot.com>. Elizabeth Demong is a paralegal at Mr. Britt's law office.

ⁱ Greenberg, M.C., Barton, J.H., & McGuiness, M.E (Eds.) (2000). *Words Over War: Mediation and Arbitration to Prevent Deadly Conflict*. Maryland: Rowan and Littlefield Publishers, Inc. at page xiii.

ⁱⁱ *ibid* at page xiv.

ⁱⁱⁱ *ibid* at page xiv.

^{iv} *ibid* at pages. xiv-xv.