

Sample Condominium Bylaw:

Arbitration and Mediation and Court to Resolve Disputes

Introduction: People often ask about the value of mediation or arbitration if section 69 of the Condominium Property Act says disputing parties have to agree a) to use arbitration or mediation and b) who to appoint as the arbitrator or mediator. Yes, it can be difficult to get people to agree during a time when they are disputing. Sometimes people can be convinced to use a process other than court – a process which gives them more input into and control over the timing, process and cost involved. After all, if there is a dispute, there is always the option of court. So, faced with court as the probable step, parties may agree to use a different process – mediation or arbitration.

Another option is to make the agreement when parties are in agreeable mindsets – meaning before a dispute arises. In condominium there are two places this can occur – when parties enter into a contract and in the bylaws.

Businesses have for years used arbitration and mediation provisions in their contracts. The ADR Institute of Canada has developed recommended contract language for both mediation and arbitration provisions – see:

http://www.adrcanada.ca/rules/national_arb_rules.pdf and
http://www.adrcanada.ca/rules/commercial_mediation.html.

A sample bylaw is set out below which could be used by condominium corporations to obtain agreement of the disputing parties (owners, boards, condominium corporation) to use mediation and arbitration as alternative dispute resolution processes. The bylaw helps people understand the obligation and what has to be done, when and by whom to make it work. By agreeing to include a dispute resolution bylaw in the bylaws of the corporation, the owners, board and corporation can agree in advance to use these processes. This means when a dispute arises, they implement the bylaw, rather than trying to reach agreement on using mediation or arbitration.

Dispute Resolution - Arbitration, Mediation and Court to Resolve Disputes

- 1) In addition to the other methods contemplated in the Act or these by-laws, the Corporation, Board and owners may resolve any dispute concerning or arising under these by-laws or the Condominium Property Act (“Act”) and Regulation using mediation and arbitration under section 69 of the Act.
- 2) Nothing in this by-law _____ shall limit the Corporation’s rights to collect amounts owing under section 39 of the Act, pursuant to sections 39, 40, 41 and 42 of the Act. At the Board’s sole discretion, all such collection proceedings shall not be submitted to arbitration or stayed by a Notice of Arbitration or a request to use arbitration.
- 3) Mediation is a process where an independent party assists the parties to reach their own settlement. Arbitration is a process where an independent party hears from the parties and makes a final and binding decision.

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4) a) If the Corporation, Board or an owner wishes to use mediation to settle the dispute, the disputing party should first give written notice to the other party(s) of its desire to use mediation, including a detailed description of the dispute and the name(s) of mediators the disputing party is willing to agree to as mediator.

b) If the Corporation, Board or an owner receives a request to use mediation to resolve a dispute, it is deemed to agree to use mediation. Within 7 days of receiving the request for mediation, the responding party shall send to the disputing party a written notice outlining its description of the dispute and the name(s) of mediators the responding party is willing to agree to as mediator.

c) If the parties are unable to agree on the name of a mediator, the parties agree to jointly submit a request for appointment of a mediator [to an independent third party or organization or under section 77 of the Regulation].

d) The parties agree to each bear their own costs of participating in the mediation and to jointly share the costs of the mediator and the mediation process, unless otherwise agreed by the parties before or as part of the mediated settlement.

5) a) If the Corporation, Board or an owner wishes to use arbitration to settle the dispute, the disputing party should first give written notice to the other party(s) of its desire to use arbitration, including a detailed description of the dispute, the sections of the Act or by-laws involved, a list of the remedies it seeks in arbitration and the name(s) of arbitrator(s) the disputing party is willing to agree to as arbitrator.

b) If the Corporation, Board or an owner receives a request to use arbitration to resolve a dispute, it is deemed to agree to use arbitration under the provisions of the Act and the Arbitration Act. Within 7 days of receiving the request for arbitration, the responding party shall send to the disputing party a written notice outlining its description of the dispute, the sections of the Act or by-laws involved, the list of remedies it seeks in arbitration and the name(s) of arbitrators the responding party is willing to agree to as arbitrator.

c) If the parties are unable to agree on the name of an arbitrator, the parties agree to jointly submit a request for appointment of an arbitrator [to an independent third party or organization or under section 77 of the Regulation].

d) The parties agree to each bear their own costs of participating in the arbitration and to jointly share the costs of the arbitrator and the arbitration process, unless otherwise agreed by the parties or awarded by the arbitrator.

6) The Corporation, Board or an owner may use the Court process identified in section 67 of the Act to deal with allegations of "improper conduct" as it is defined by the Act.

Alternative sections to include:

I) The Corporation may develop a roster of qualified arbitrators and mediators who agree to accept appointments under these bylaws. Such a roster will be presented to the owners at the annual general meeting and may be amended from time to time with approval of a simple resolution at a general meeting.

II) The Board will develop a roster of qualified arbitrators and mediators who will be appointed in rotation to disputes arising under this bylaw. The roster will be published to all owners.

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