

Arbitration in Condominium and Business

*By Deborah M. Howes, BA, LLB, ACCI, FCCI
Chartered Arbitrator, Chartered Mediator
High Clouds Incorporated*

Arbitration is one of the oldest methods of settling disputes. Many businesses choose arbitration over court to deal with contract disputes and disputes over supplies, products and payments between businesses or between businesses and their clients. People often contact arbitrators to see if arbitration will work in their dispute or wondering how to start arbitration. A business or condominium corporation can do it themselves or rely on professionals to help them: lawyers or arbitration case managers. Either way, arbitration can be a fast, cost effective, informal process to obtain a final and binding decision on a dispute. The following comments provide an insight into the arbitration process and how to start it.

What is Arbitration? An arbitrator or arbitration panel, under the Condominium Property Act and the Alberta Arbitration Act, acts as a private judge for the parties. The arbitrator chairs a hearing where the disputing parties present their cases. Then the arbitrator makes a final and binding decision.



Why use Arbitration? In arbitration, the parties get to choose their arbitrator or panel; they cannot choose their judge. All matters in arbitration remain private, rather than being public as in a trial. This can protect sensitive information and relationships. The arbitrator consults the parties about the hearing and process: when, where, how formal or informal. Arbitration hearings can occur quickly and with little or lots of fuss and formality, depending on the parties and the dispute. Arbitration is flexible and responsive to the process needs of the parties involved.

What can the Arbitrator do? The arbitrator can interpret the Act, bylaws and contract. All arbitrators will assess the evidence from the parties. The arbitrator ensures the hearing process is fair to all parties. An arbitrator may give directions to the parties to do or stop doing something and can award damages and interest, if required.

How does a party enforce the arbitrator's decision? If one party does not comply with the arbitrator's directions and decision, the other party can file the written decision in the Court of Queen's Bench. The written decision or order of the arbitrator is then enforceable just like a judge's decision.

How does Arbitration fit with the Alberta Condominium Property Act? The Condominium Property Act encourages the parties to use arbitration. Section 69 states:

- 69(1) Any dispute respecting any matter arising under this Act or in respect of the bylaws of a corporation may, with the agreement of the parties to the dispute,
- (a) be dealt with by means of mediation, conciliation or similar techniques to encourage settlement of the dispute, or
 - (b) be arbitrated under the *Arbitration Act*.
- (2) Nothing in subsection (1) shall be construed so as to prohibit a dispute from being arbitrated subsequent to an unsuccessful attempt to deal with the dispute by means of mediation, conciliation or a similar technique.

Who is the Arbitrator and what is the role of the Arbitrator? The arbitrator is independent of the parties; has an open mind (is impartial); is professionally trained and experienced in this type of work. Arbitrators often abide by an arbitrator's code of conduct or ethics and always treat the process as confidential and private. The arbitrator oversees the process, chairs the hearing, makes the decision on the issues and writes an award for the parties.

Who can be an Arbitrator and how do parties choose an Arbitrator? Any person who is agreed to by the parties can be an arbitrator. Arbitrators can also be



appointed by outside agency or person if the parties cannot agree. One party alone cannot choose the arbitrator or hire the arbitrator.

As with any other professional a condominium or business would contract with, some selection guidelines are useful. Generally, parties want an arbitrator who:

- has training and experience as an arbitrator
- can run a fair and efficient hearing
- is knowledgeable in the subject matter: eg condominium or interpreting contracts
- is available to chair the hearing and write the award in a reasonable time
- writes a clear and understandable award
- charges a fee acceptable to the parties
- is part of a professional organization and committed to a code of ethics, and
- meets any other qualifications agreed by the parties.

Sometimes parties cannot agree on the name of the arbitrator. In those cases, the contract may identify another person or organization who can name the arbitrator. For condominium corporations, the CPA Regulation says:

77 If the parties to a dispute referred to in section 69 of the Act wish to deal with the dispute under section 69 of the Act but are unable to agree on a mediator or an arbitrator, as the case may be, the Alberta Arbitration and Mediation Society is, subject to any agreement between the parties, authorized to appoint a person as a mediator or an arbitrator in respect of that dispute.

What is the role of the parties in Arbitration? The disputing parties prepare and present their cases before the arbitrator, either alone or through a representative. They gather and present the information (witnesses and documents) to prove their case and persuade the arbitrator. They present their cases in a professional and courteous manner. They assist the arbitrator and the other parties in completing the hearing.

What are the steps in the Arbitration process? A typical arbitration begins with the parties deciding to use arbitration and choosing an arbitrator. The arbitrator then consults the parties about the process and hearing date. At the hearing both sides present their cases and answer questions from the other side and from the arbitrator. Then the arbitrator works privately to make a decision and send it to the parties. When they receive the award, the parties carry out the directions of the arbitrator.

Notice of Intent to Arbitrate / Arbitration Claim

To: _____
(name of the opposing party)

(address of the opposing party)

From: _____
(your name)

(your address)

(your phone #, fax # & email)

Date: _____

I/We notify you that I/We wish to arbitrate the following dispute with you under the Alberta Arbitration Act.

1. The Dispute:

How I describe the dispute: (provide a summary of who, what, where, when, how of the events leading to the dispute)

2. *Relevant sections of the Condominium Property Act; Condominium Bylaws; or contract:*

3. *What I/We want as a result: (describe what you seek at the end)*

4. *Who should arbitrate? (Choose a) or b) or c)).*

I/We wish to have:

a) _____ a single arbitrator decide this for us. I/We suggest one of the following persons as the arbitrator: (list name, contact information and provide a bio, if you have it)

b) _____ a three person panel of arbitrators decide this for us. Each of us will appoint one arbitrator and then our two arbitrators will then choose a third arbitrator who will act as the chair of the panel. My appointed arbitrator, on the three person panel is

(provide name & contact info).

c) _____ we should ask the Alberta Arbitration and Mediation Society to appoint an arbitrator for us for this dispute.

5. I/We am also interested in seeing how you describe the dispute between us and what you want as a result. I invite you to provide the information to me in the same way I have given this to you by completing the Response to Notice of Intention to Arbitrate and sending it back to me within seven (7) calendar days.

Signature and Printed name

How does someone start the Arbitration process?

If you wish to start the arbitration process, contact the other side (verbally or by letter, fax or email) outlining what you see as the dispute, what your view is and what you see as the potential outcome. Invite the other side to join with you to appoint an arbitrator to hear from both of you and make a final decision for both of you. Suggest possible names of arbitrators you would find acceptable. Ask the other party to review and choose from the names you provide or to provide alternate names. Go back and forth until you agree on an arbitrator.

1. Consult your condominium bylaws or contract with the other party to see if there is an arbitration clause. If there is a provision, read it and follow it.
2. If you have questions about whether your case should be arbitrated or the merits of your case, contact your legal advisor. Arbitrators will provide information about the process, but do not comment on the merits for one party and do not provide representation to any party.
3. Talk to the other party, if possible, about using arbitration. You might settle at this point or at any point in the process.
4. Research who you want to be the arbitrator. Check with others you know who have used arbitrators. Check with CCI or various arbitrator associations for available arbitrators – www.aams.ab.ca or <http://www.amic.org/aboutus.html> or <http://www.crnetwork.ca/> or www.ADRWeb.ca. You may call several possible arbitrators to ensure there are no conflicts of interest and that they have the time to do the arbitration.
5. Send a written notice to the other party that you want to arbitrate the dispute. This can be a letter or a form (there is no magic here only

basic information). One example is a Notice of Intent to Arbitrate form. It can help you clarify what you see as the dispute and what you want. Keep copies of all the documents for your own files.

6. Welcome a response from the other side – their letter about their side of the dispute or Reply to Notice to Arbitrate. The other side may also have a counterclaim against you; if so they will tell you about that and you will respond.
7. See if both of you can agree or have agreed to an arbitrator or if you have to exchange a new list of potential arbitrators or use an outsider to appoint an arbitrator for you.
8. When you have the arbitrator's name as agreed or appointed by the outsider, one or both of you need to contact the arbitrator to confirm the hiring of / appointment of the arbitrator.
9. From that point the arbitrator generally takes over the arrangements and will work with both parties to keep the process moving forward.

What does the Arbitrator do after being selected?

The arbitration process involves the parties and the arbitrator will consult them about many process matters. After being contacted by the parties to serve as arbitrator, the arbitrator usually talks with the parties in pre-hearing meeting or conference call to about matters to assist to schedule and conduct the hearing. The arbitrator will usually send the parties a letter setting out the agenda for the meeting and another letter confirming the outcome of that pre-hearing meeting. Most arbitrators require the parties to pay a security deposit before the hearing to cover the estimated fees of the arbitrator.

How do the Parties prepare for the arbitration hearing?

The parties each gather their evidence (witnesses and documents), do their research and prepare to present their case to the arbitrator. They also complete any steps the arbitrator directed them to complete from the pre-hearing meeting.

What happens at the Hearing?

At the hearing, each party is expected to present its own case. A hearing will take as long as it takes the parties to present their cases. Some hearings last one hour and others can take one or more days. The arbitrator will chair the hearing, ensuring fair process and deal with any objections raised by the parties. The hearing is normally semi-formal and is often held in a board room, meeting room or hotel meeting room. Parties can present their own cases or can be represented by a consultant, friend, family member or lawyer.

The arbitrator usually opens with some comments. Then each party presents their case. Witnesses testify one at a time and may have to answer questions from the other side or the arbitrator. After all witnesses testify each party makes their closing arguments to the arbitrator and answers any questions from the arbitrator. The arbitrator usually closes the hearing with some final comments.



When will the Arbitrator make the decision and tell the parties?

The arbitrator will, within the agreed time limits or a reasonable time, make a decision and prepare a written award for the parties outlining the decision and the arbitrator's reasons. When the written decision is ready, the arbitrator will send it to the parties with the arbitrator's invoice.



Seminars & Dispute Resolution Services

Who else uses Arbitration? Arbitration is a well accepted and commonly used dispute resolution process by the Better Business Bureau, the Alberta New Home Warranty Plan, the Canadian Motor Vehicle Industry, credit card companies, banks, insurance companies and many national and international businesses.

Where does one get more Information? Information about arbitration is available from any arbitrator. CCI will host a seminar in early 2009 about arbitration and mediation. Parties can ask their lawyers about the process. The ADR Institute of Canada Inc. provides Canada –wide information about arbitration.