

CONDOMINIUM DISPUTE RESOLUTION

An Alternative Dispute Resolution Service



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New England's Advocate for Responsible Communities

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MISSION STATEMENT

Condominium Dispute Resolution is not a branch of government or the judiciary but an alternative dispute resolution organization established under the aegis of the New England Chapter of Community Associations Institute in order to assist in the resolution of conflicts arising in community associations including condominiums and cooperatives.

DEFINITIONS

ADR. ADR stands for alternative dispute resolution and may take the form of Arbitration or Mediation as defined below.

Arbitration. Arbitration is a process of dispute resolution whereby a Neutral (as defined herein) renders a decision after hearing an abbreviated version of the evidence that could be produced at trial. Arbitration is a form of adjudication, whereas mediation is not. Depending on the agreement of the parties, the facts found by the Neutral may or may not be binding. In non-binding arbitration, either party may demand a trial after arbitration, subject to the rules of court and laws of the particular jurisdiction.

By-Laws. By-Laws refer to the By-Laws of Condominium Dispute Resolution, which establish the internal rules and restrictions guiding the officers of Condominium Dispute Resolution, the appointment, qualification and training of Neutrals, and other matters pertinent to the operation of Condominium Dispute Resolution.

Initiator. This term refers to the person, or persons, who start the ADR process.

Mediation. Mediation is a process whereby a Neutral reasons with the parties in an attempt to facilitate a settlement. The Neutral attempts to focus the attention of the parties upon their needs and interests rather than upon their rights and positions. Any settlement is voluntary and the Neutral has no right to force a settlement, make any findings or rulings that are binding upon the parties, or enter any order. In the absence of settlement the parties lose none of their rights to a trial on the merits of their case. In order to facilitate settlement discussions, all parties to a mediation agree that all comments, concessions, offers and positions will not be used against the other party in any further proceeding.

Neutral. The term Neutral as used in these rules refers to mediators, and arbitrators who, in all cases must be an impartial person without any relationship with the parties and witnesses. If a matter is mediated and later is submitted to arbitration, the Neutral in the mediation shall not conduct the arbitration.

Respondent. This term refers to the person, or persons, responding to the commencement of the ADR process.

PROTECTIONS

Confidentiality

To the extent permitted by law, any statement made during a mediation or as part of intake by program staff in preparation for a mediation is confidential, not subject to disclosure by the Neutral or Condominium Dispute Resolution staff, and may not be used as evidence in any further proceeding. Unless a court's ADR rules provide otherwise, the confidentiality herein applies to non-binding arbitration conferences.

Confidentiality does not extend to items that are otherwise discoverable, threats of imminent violence to self or others, or matters otherwise required to be reported by statute.

Parties will be informed of limitations on confidentiality at the beginning of the ADR process. Collection of information necessary to monitor the quality of a program is not considered a breach of confidentiality.

Immunity

The agreement for ADR to be executed by each party prior to the commencement of any proceeding hereunder shall be deemed to provide that no Neutral, nor Condominium Dispute Resolution, nor its officers, directors, members, or employees is to be held liable for civil damages for any statement, action, omission or decision made in the course of any ADR process unless that statement, action, omission or decision is a) grossly negligent and made with malice or b) is in willful disregard of the safety or property of any party to the ADR process.

ADMINISTRATION

Condominium Dispute Resolution is administered by an Administrator appointed by the Directors of Condominium Dispute Resolution. The office of the Administrator is located at 888 Worcester Street, Suite 20, Wellesley, Massachusetts 02482. Phone: 781-237-9020 / Fax: 781-237-9028

Applicable Rules.

The parties shall be deemed to have made these rules a part of their ADR agreement whenever they apply for alternate dispute resolution of their issues to Condominium Dispute Resolution, regardless of the type of ADR selected. If a party establishes that any material inconsistency exists between the executed ADR agreement and these rules, the Neutral shall apply these rules, unless the parties to the agreement agree to amend these rules for purposes of their ADR proceeding. Nothing contained herein shall prevent parties to an ADR proceeding hereunder from establishing rules that are inconsistent with these rules provided that they bring such changes to the attention of the Neutral in writing and such are accepted by the Neutral. The form of the rules shall be that current at the time the request for services is received by Condominium Dispute Resolution.

Fee Schedule

Administrative Fee: A \$500 (\$600 for non-CAI members) non-refundable administrative fee is due and payable in advance at the time a dispute is submitted. If the submission is other than by court order or joint request, \$250 (\$300 for non-CAI members) shall be submitted by the Initiator with the Request and \$250 (\$300 for non-CAI members) shall be submitted by the Respondent with the Response. If either party is a CAI member the CAI rate shall apply.

Neutral's Fee: The Neutral shall be compensated by the parties at the rate of \$200 (\$300 for non-CAI members) per hour for the first three (3) hours and at \$300 (\$400 for non CAI members) thereafter. A \$600 (\$900 for non-CAI members) deposit shall be submitted upon selection of the Neutral and additional deposits made at the Neutral's request. There shall be a two hour minimum charge.

Rescheduling Fee: A \$100 (\$150 for non-CAI members) fee shall be charged to reschedule a mediation or arbitration hearing within forty-eight hours of the scheduled time to be paid by the party so requesting, unless otherwise agreed.

Fee Policies: All fees are due and payable in advance and are non-refundable. Checks should be made payable to Condominium Dispute Resolution. The Neutral's fees shall be charged equally, unless the parties agree otherwise. In arbitration proceedings, a Neutral may award a party's administrative and Neutral's fees as part of the decision, unless the parties agree otherwise.

In the event that any administrative or Neutral's fees are not paid, the proceedings may be suspended or terminated until such fees are paid in full.

These fees are effective as of June 1, 2004 and may be changed at any time by Condominium Dispute Resolution.

Commencement of ADR.

ADR shall be initiated in the following manner.

- a) A court of competent jurisdiction may order a case to Condominium Dispute Resolution for determination under any of the forms of ADR offered by Condominium Dispute Resolution.
- b) The parties may submit a joint request for ADR to Condominium Dispute Resolution.
- c) Any party to a dispute may request any of the forms of ADR by filing a written request for ADR ("Request") to Condominium Dispute Resolution together with a statement of facts involved, damages (if any) and relief sought within the time limit established by the applicable statute of limitations. The filing party shall be called the Initiator for purposes of these rules. The filing shall be made in such multiple copies as required and shall be accompanied by the applicable ADR agreement and the appropriate administrative fee. The Initiator shall set forth the names, addresses, and telephone numbers of all the parties and their attorneys, if known.

Condominium Dispute Resolution shall mail a copy of the Request to all other parties who, for purposes of these rules shall be called the Respondent(s).

The Respondent(s) wishing to participate shall file a Response with Condominium Dispute Resolution, together with the ADR agreement submitting the Respondent to these rules, within **twenty-one (21)** days after receipt of the Request. A copy of the Response shall also be sent to the Initiator by the Respondent. The Response may provide the Respondent's version of the facts or may adopt the Initiator's version of the facts, and it may contain a responding claim against the Initiator.

All filings are to be in simple, understandable English, and need follow no formal rules of pleading.

If a Respondent declines to participate, the matter shall be terminated and all but \$50.00 of the deposit shall be refunded to the Initiator unless a competent court orders otherwise.

- d) Either party may be represented by counsel but must give at least **fourteen (14)** days advance notice to Condominium Dispute Resolution and the other party if they elect to be represented.

Appointment of the Neutral.

The parties will choose a Neutral from a list of Neutrals provided by Condominium Dispute Resolution. The parties must agree on the Neutral within **fourteen (14)** days of receipt of the list from Condominium Dispute Resolution. If the parties cannot agree on a Neutral, one will be appointed by the Administrator.

Amending Complaints, Claims and Answers.

Any party may request an amendment to their statement of claim or response, in writing addressed to the Administrator of Condominium Dispute Resolution, who shall assign the request to a Neutral and who shall notify all parties of the request. Any party may object to the request, in writing, addressed to the Administrator within **ten (10)** days of notification of the request by the Administrator. The Neutral to whom the request has been assigned shall then make a determination as to whether to allow the request. It is the intent of these rules that such requests be freely allowed unless the objection demonstrates unfair prejudice to the objecting party.

Discovery.

Discovery shall only be permitted in arbitration, and then only upon request therefor to the assigned Neutral. The Neutral shall notify the other party(s) of such request and give them an opportunity to object in writing. The Neutral shall notify the requesting party of any objection and shall schedule a conference on the request by written notification to all parties. Such conference may be by telephone.

Dates and Times of Hearings.

The Neutral shall have the responsibility to set the date(s), time(s) and place(s) of hearing(s). To the extent there are costs associated with a particular venue such costs shall be borne by the parties. The Neutral shall make reasonable efforts to accommodate the schedules of the parties. However, if, in the Neutral's opinion, the parties cannot reasonably agree to a mutually convenient date, time or place, the Neutral shall establish a binding date, time or place.

Communications with Neutrals.

There shall be no ex parte communications between the Neutral and the parties or their representatives. All communications must be in writing with a copy to all other parties or their attorneys as the case may be.

Agreements.

All agreements reached during the ADR are to be reduced to writing.

Additional Rules for Arbitration.

In the event that the matter is submitted to arbitration, the following rules will apply.

- a) Attorneys.** Parties may, but need not, be represented by counsel.
- b) Screening Conference.** The Neutral shall schedule a screening conference as soon as practical after the issues have been joined. During that conference, the Neutral shall request that each party or their counsel, as the case may be, make a statement in the nature of an opening statement to better inform the Neutral as to the issues. The Neutral shall then make inquiries to determine if the issues can be narrowed. The Neutral shall inquire as to whether any party intends to request discovery and set a time limit on the receipt of discovery requests. A hearing date may be established for the hearing of discovery requests. A cut-off date for motions, except motions that arise out of responses to discovery, shall be established. Said conference may be held by telephone at the Neutral's discretion.

The Neutral shall determine the following:

- (i) the issues to be arbitrated;
- (ii) the date, time, place and estimated duration of the hearing;
- (iii) the resolution of outstanding discovery issues and establishment of discovery parameters;
- (iv) the law, standards, rules of evidence and burdens of proof that are to apply to the proceeding;
- (v) the exchange of stipulations and declarations regarding facts, exhibits, witnesses and other issues;
- (vi) the names of witnesses (including expert witnesses), the scope of witness testimony, and witness exclusion;
- (vii) the value of bifurcating the arbitration into a liability phase and damages phase;
- (viii) whether the parties will summarize their arguments orally or in writing;
- (ix) any other issues relating to the subject or conduct of the arbitration.

The Neutral shall issue oral or written orders reflecting his or her decisions on the above matters and may conduct additional conferences when the need arises.

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- c) **Discovery.** At a hearing on requests for discovery, if discovery is allowed, the Neutral shall set a date for completion of the discovery and establish a date, time and place for hearing objections and other issues related to the discovery. Further hearings may be scheduled as the Neutral deems appropriate. Hearings on discovery may be by conference call at the Neutral's discretion.
- d) **Remaining Motions.** After discovery is completed, the Neutral shall schedule hearings on any motion that arises as a result of information obtained by discovery.
- e) **Summary Judgment.** There shall be no summary judgment proceeding in arbitration.
- f) **Hearing Time, Place and Date.** The Neutral shall establish a hearing date, time and place for hearing of the issues as soon as practical after all motions (except motions reserved for the hearing) have been disposed of and discovery has been completed.
- g) **Interpreter.** If any party or the Neutral determines that an interpreter is necessary, the party requesting and/or requiring the interpreter shall make arrangements (including payment) for such person and shall make arrangements for such person's appearance.
- h) **Hearing.**
- (i) The Neutral may, at the beginning of the hearing, request or waive the requirement for opening statements.
 - (ii) The parties shall bear the same burdens of proof and burdens of producing evidence as would apply if their claims and counterclaims had been brought in court.
 - (iii) Witnesses for each party shall submit to direct and cross-examination as approved by the Neutral.
 - (iv) With the exception of the rules regarding the allocation of the burdens of proof and going forward with the evidence, the Neutral has the authority to set the rules for the conduct of the proceedings and shall exercise that authority to afford a full and equal opportunity to all parties to present any evidence that the Neutral deems material and relevant to the resolution of the dispute. However, other than incompetent evidence, the Neutral shall not exclude evidence that might be helpful in determining the true facts of the case. The Neutral may accept evidence, in the Neutral's discretion, that might not be admissible in a court of law.
 - (v) Documentary and others forms of physical evidence, when offered by either party, may be received in evidence by the Neutral.

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- (vi) The names and addresses of all witnesses and a description of the exhibits in the order received shall be made a part of the record.
- (vii) Any evidence, whether consisting of live witness testimony, physical exhibits, videotapes, tape recordings, photographs, business records, documents or other forms of evidence, including hearsay evidence, shall be admitted if, in the Neutral's determination, it is relevant, material to the dispute, and reliable. Hearsay evidence generally shall not be accorded the same weight as direct evidence, but the probative value to be accorded to hearsay evidence shall be within the discretion of the Neutral. Evidence which is unduly repetitious or unduly prejudicial shall be excluded. The rules of privilege applicable to Massachusetts state court cases shall be applied to exclude evidence either upon objection by the party opposing the same or at the discretion of the Neutral.
- (viii) In his or her discretion the Neutral may permit evidence to be received by telephone, videotape, video conference, or electronic mail transmission in circumstances where live testimony at the hearing is not reasonably possible, if the opposing party will not be unduly prejudiced thereby, and if appropriate facilities therefore are available. The Neutral may receive and consider evidence of witnesses by affidavit. The Neutral shall determine the weight to be given such evidence after considering the reliability thereof and any objection made to its admission. Except in cases where circumstances do not so permit, a party proposing to submit witness testimony other than by live, in-person presentation at the hearing shall provide at least **ten (10)** business days prior notice thereof to the Neutral and all other parties. In the event that ten days prior notice is not possible, notice shall be provided at earliest opportunity. The Neutral may establish such terms for admission or presentation of such testimony as may be fair and appropriate.
- (ix) The Neutral may examine witnesses and may request production of additional evidence by the parties. To the extent provided by the law or court rule, the Neutral may issue subpoenas for witnesses and production of documents either upon written request of a party or at the Neutral's initiative. The Neutral may draw a negative inference from a parties' refusal to produce requested evidence.
- (x) In determining the admissibility and weight of evidence the Neutral shall be guided by principles of fairness to all parties, full disclosure of relevant information, and development of a complete understanding of the facts and issues at hand.
- (xi) An award shall not be based solely on the default of a party. The Neutral shall require the party who is in attendance to present such evidence as the Neutral may require for the making of the award.

(xii) The Neutral shall be the judge of the relevance and materiality of the evidence offered, and conformity to legal rules of evidence shall not be necessary. The Neutral may in his or her discretion direct the order of proof, bifurcate proceedings, exclude cumulative or irrelevant testimony or other evidence, and direct the parties to focus their presentations on issues the decision of which could dispose of all or part of the case.

(xiii) The Neutral may make such rulings and take such action as the Neutral deems appropriate for preserving evidence, viewing a scene, inspecting physical evidence elsewhere than the hearing room as the Neutral seems appropriate.

(xiv) When each party has finished its presentation, the Neutral shall ascertain whether the party rests its case. When all parties have rested, the Neutral may or may not request briefs.

(xv) The Neutral may entertain post hearing motions, prior to entry of his or her findings, and act thereon in the interest of justice.

- i) **Decision.** The Neutral shall issue findings of fact and shall issue an award to the prevailing party within **thirty (30)** days of the close of evidence or the receipt of requested briefs, whichever is later. The award can be in any form that a court may order and may include an award of attorney's fees and costs where legally permissible.
- j) **Post-Decision.** The Neutral shall not make any post-decision orders or changes except that if the Neutral becomes aware of an error, the Neutral may make alterations to correct the error.
- k) **Finalization.** Once the decision has been finalized, the Administrator of Condominium Dispute Resolution shall notify the parties, whereupon they shall either comply with the award or be left to their remedies at law.