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COMMENTARY

Working It Out

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ADR for homeowner associations makes sense

Disputes involving homeowners' associations often lead to costly and time-consuming litigation — and, often, decisions that neither party finds acceptable.

That is why the New Jersey Association of Professional Mediators, of which I am president, supports the dispute resolution process in the proposed New Jersey Uniform Common Interest Ownership Act (A-798/S-805). The measure, which would establish how homeowner associations operate, includes a dispute resolution process that begins with mediation and moves, if necessary, to binding or nonbinding arbitration.

The professional mediators' association does not take a view on other aspects of the bill, such as board power and limitations, the ability to borrow money and the ability to grant easements over common property. Our comments focus only on the aspects of the bill related directly to conflict resolution methods.

Our mission is to support processes that provide quicker and more efficient resolutions to disputes, reduce litigation costs, advance rather than impair relationships and allow for disputing parties to provide their own solutions to their conflicts.

One need only look to recent Appellate Division cases to see a sampling of homeowner association issues

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that could benefit from improved dispute resolution techniques:

- A homeowner is told he is not allowed to park his van, which he uses for his business as an electrician, in his driveway.
- Homeowners are told by their association that they are responsible for the cost of repairing and reconstructing a dam.
- A group of homeowners question whether a condominium homeowners' association can change the method of calculating maintenance assessments.
- Mobile homeowners are told by their landlord, the owner of the mobile home park, that they need to comply with new lease provisions, including conversion of their heating systems from oil to natural gas, at their own expense.
- Homeowners question whether a seller knew or should have known of the existence of toxic waste sites in close proximity to the condominium development.

Some interesting statistics about the scope of these issues appeared in a Feb. 7 Appellate Division decision, *Committee for a Better Twin Rivers v. Twin Rivers Homeowners' Association*, A-4047-03T2, in which the court held a private community cannot abridge its residents' freedom of speech. According to the opinion, the Department of Community Affairs estimates that 40 percent of private residences in New Jersey are governed by homeowners' associations and almost 20 percent of new homebuyers are required to join community associations.

Clearly, the issue of improved dispute resolution processes for homeowners' associations impacts a growing percentage of New Jersey's population.

While the primary focus of *Committee for a Better Twin Rivers* was free speech, another important issue was the homeowners' request for an improved alternate dispute resolution mechanism. However, the court found that the mecha-

nisms provided by the Twin Rivers Homeowners' Association were not inadequate. The court said it was "unwilling to hold that a \$150 deposit to be submitted by a petitioner requesting ADR under the policy unreasonably denies access to ADR, especially in light of the comparative cost of litigation."

From our perspective, most homeowners' association bylaws, including Twin Rivers', do not go far enough in providing for an ADR process. They should specify qualifications and experience necessary to serve on the ADR committee, outline which conflicts might better be addressed by professional mediators and delineate situations where a homeowner or group could apply for a fee waiver. Time frames should be set for addressing disputes and written communications need to be established so homeowners understand their rights and responsibilities.

And this leads to the benefits of A-798/S-805 to homeowners and association boards. A solution such as mediation should be the first avenue for resolving disputes, especially because parties have a stronger commitment to maintaining their agreements when they craft the resolution. Generally, mediation is also faster and less expensive than traditional litigation.

Mediation by a trained, neutral third party can be initiated if a homeowner does not agree with the board's decision, rather than after both parties invest significant sums in the litigation process. And the stepped process to dispute resolution makes sense; if mediation does not work, the bill provides for the next best option of arbitration.

People move to condominiums, townhouses and other planned communities for the lifestyle, security and shared amenities they provide. Without affordable and efficient dispute resolution techniques, including

mediation and arbitration, the perceived benefits of community living will be overshadowed by the potential cost of litigation and will ultimately be reflected in resale prices. *A-798/S-805* presents an answer to this problem. ■