Why Cant We Just All Get Along?

One of the most unique aspects of condominium living is the concept that unit owners are living in a community with upwards of 400 neighbours and, as such, they must learn to get along with everybody and to comply with the declaration, bylaws and rules. For many first time condominium buyers who have lived in a house all their lives, this can be quite the eye-opening experience. As soon as you sign on the dotted line you are handed a package of documentation that can be several inches thick. Trying to read this stuff is the perfect remedy for insomnia. Unfortunately, these documents have to be read because it contains all the necessary information that you need in order to live in that particular condominium community. In particular, the declaration, by-laws and rules set out exactly what your obligations are and what you can and cannot do. This can be foreign to a first time buyer of a condominium who has never been told what colours they can paint their garage door, how many pets they can have, what types of vehicles they can park in their parking spot, or what hours they can use the pool or exercise equipment. Some rules may seem extreme; others may seem to be arbitrary or just plain unfair, which may can affect the owner's lifestyle.

Eventually, and in most condominiums, there will be those who violate the declaration, by-laws or rules. Thus, the condominium corporation must then take the necessary steps to enforce compliance with the declaration, by-laws or rules. The corporation has a duty under the *Condominium Act, 1998* (the "**Act**") to ensure that all the unit owners comply with the *Act*. The unit owners have the right to expect the condominium corporation to enforce compliance with the Act. Therefore, under the *Act*, there are certain enforcement proceedings that are put in place which will deal with and hopefully, resolve these issues. Under the old *Condominium Act*, the only remedy that the condominium corporation had was to apply to court for a compliance order. These types of applications were often contested by the unit owner and many times the cost of these applications ran into many thousands of dollars which the rest of the unit owners would have to pay through their common expense fees. When drafting the new Act, the government wanted to take these types of disputes out of the court room and have the condominium corporations resolve

these disputes internally through mediation and arbitration. Thus, we have the development of the mediation and arbitration provisions in Section 132 of the *Act*. These were specifically put in place to allow the condominium corporations to have an inexpensive and informal manner in which to resolve disputes without the use of courtrooms and the expense of same. Under Section 132 of the *Condominium Act*, when there is a disagreement between a unit owner and a corporation, over the declaration, the rules and the bylaws, the first step is to no longer go to court, but rather to go to mediation. The concept is quite simple. The condominium corporation, the unit owner and a qualified mediator meet in a room and try and resolve the disagreement that day. The mediation is "without prejudice"; meaning that it is off the record and anything said at that mediation cannot be used in any further proceedings. This way, both parties are can feel free to speak their mind.

In the writer's experience, mediation can be a very effective tool for resolving disputes. It allows the parties to meet face to face and discuss the issue between them. Under the old act, once a legal proceeding was commenced, it would be the lawyers that did all the talking and we all know where that will lead: right into the courtroom. One of the significant differences between commercial litigation and condominium litigation is that at the end of the day, the parties involved in condominium litigation still have to live together in the same building. They will run into each other at meetings, in the elevators, in the exercise room, in the parking lot, or the lobby. It can be a tense situation that can outgrow the matter that was originally in dispute. This can lead to years of hostility between the unit owner and the members of the board of directors. In many situations, this can be avoided by mediation. At the end of the day, each party can walk away with their head held high and tell their neighbours "we settled" or "we worked things out". In my experience, a significant advantage of mediation is that the mediation can deal with issues that generally are not formally part of the mediation brief. Many times, the main issue in dispute is just the tip of the iceberg and that there are several other bones of contention that the unit owner has and that the violation that was the subject matter of the mediation was simply the last straw. A court will not hear all the other issues, it will only deal with what's mentioned in the application, however at a mediation, as often is the

case, these other issues will be put on the table and the resolution of these secondary issues usually helps resolve the main issue.

The biggest advantage of mediation over a court application is the cost. Court applications involve preparation of, among other things, affidavits, factums, and books of authorities, all of which cost money to prepare. In addition, if the matter is contested, then there may be cross-examinations by the lawyers. This alone will cost anywhere from $5- $15,000.00 depending on the complexity of the dispute. For mediation, all is required is the preparation of short summary of the matter. The rest of the details will be provided by the parties at the mediation. An experienced mediator can go a long way to resolving disputes between parties.

The intended purpose of revising the enforcement provisions of the *Act*, namely to achieve an extremely effective, efficient, and relatively inexpensive way of settling condominium disagreements relating to the condominium's declaration, bylaws and rules can be achieved through mediation. If the mediation fails to obtain a settlement of the dispute, then the *Acts* stipulates that it must proceed to arbitration, which is similar to a trial and the arbitrator will take evidence and make his or her decision that is binding on all parties and can be enforced similar to a court order.

One has to keep in mind, that the hard feelings that can be created by the adversarial process of the courtroom will have long term effects in the condominium community. The cost and animosity that is created by these proceedings will outlast the issues in dispute. While many practionners feel that the court process is far more effective and definitive, they do not have to live in the building at the end of the day, nor do they have to answer to the rest of the owners when the line item in the budget concerning legal fees are questioned as to why its so high. Mediation can be viewed as a friendlier way of resolving disputes. As my grandmother used to say, you can always catch more flies with honey than you can with…..