



Disputes Subject to Mandatory, Nonbinding Arbitration

Fort Myers The News-Press, April 19, 2007

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Q: My condominium association has several major problems with a particular unit owner. Our manager has written several demand letters requesting that the owner correct various problems with his unit and his conduct within the community. I was told that we could not go to court to force this resident to comply with our association's condominium documents, but rather we would be required to "mediate" the issues with him to come up with a resolution prior to being permitted to go to court. This owner simply does not respond to our demands, and we feel like we are left with no other alternative than to go to court. Mediation seems like a waste of time. Do we have any options? J.L. (via e-mail)

A: You have been misinformed. The process you describe whereby an association is subject to mandatory mediation before a dispute can be filed in a court of law applies to homeowners' associations. In a condominium association setting, all "disputes", as such disputes are defined in the Florida Condominium Act, are subject to mandatory, nonbinding arbitration.

There is a distinct difference between mediation and arbitration. In mediation, the mediator serves as a facilitator to attempt to achieve a resolution of the dispute. Essentially, the goal is to have the parties come to an agreement to solve their dispute.

The mediator does not make any ruling as to the outcome of the dispute. In an arbitration setting, the arbitrator's role is more akin to that of a judge. For instance, an arbitrator can order discovery, require production of documents and other evidence, and ultimately can enter orders ruling in favor of one party or the other.

In a homeowners' association setting, if mediation is not successful, a lawsuit can be filed in a court of law. In a condominium association setting, an arbitration decision is final in those disputes in which the parties have agreed to be bound, and also if a complaint for a "trial de novo" is not timely filed in a court. Any party not satisfied with the outcome of the arbitration has the right to file for a "trial de novo" (which entitles the party to file a complaint in the appropriate trial court for a judicial resolution of the dispute).

The purposes of requiring condominium associations and unit owners to submit to nonbinding arbitration is to reduce the burden on an overloaded court system, and to provide a more informal and cost-effective forum for the resolution of condominium disputes. Arbitration has proven to be a valuable tool in the dispute resolution process, which is often more cost effective than submitting the matter to a court, and in most cases less time consuming.

There are certain matters that are not “disputes” as defined by the Condominium Act. For example, disagreements that primarily involve the title to any unit or common element, the interpretation or enforcement of any warranty, the level of a fee or assessment or the collection of an assessment levied against a party, the eviction or other removal of a tenant from a unit, alleged breaches of fiduciary duty by one or more directors, or claims for damages to a unit based upon the alleged failure of the association to maintain the common elements or condominium property are not submitted to mandatory, nonbinding arbitration.

The bottom line is that “disputes” in a condominium association setting are not required to go to mediation (although voluntary mediation is encouraged and cases in the arbitration program are sometimes referred to mediation). Rather, such disputes are subject to the mandatory, nonbinding arbitration process. In a homeowners’ association setting, it is required to submit disputes to mediation before a lawsuit can be filed in a court of law.

Q: My condominium association has limited parking available for handicapped residents. We have a problem with a younger resident who regularly parks her car in a handicapped space even though she admits she does not have a handicap. She informed our board of directors in writing that she uses the space because it is the closest available space. This situation needs to be addressed, but we are unsure what we can do to stop her. D.P. (via e-mail)

A: The remedies available to the association will vary, depending upon the authority granted to the association in your declaration and bylaws. In most cases, condominium associations are granted the authority to adopt reasonable rules and regulations governing the use of the condominium property, which includes rules relating to traffic and parking. If the association has adopted parking regulations relating to the use of the

handicapped spaces, then the association may choose to take enforcement action against the violator. Additionally, most condominium documents contain general language prohibiting “nuisances” and other language that might be helpful for this type of situation.

I have previously discussed the various remedies available to community associations to resolve disputes with unit owners in a series of columns published in February and March 2006. For copies of my past columns, you may visit our website at www.becker-poliakoff.com. In this instance, if the association's declaration or bylaws authorize the association to levy a fine against the offender, the board may wish to refer the matter to a fining committee. If the violator persists in using the handicapped parking space, the association is also entitled to file a petition for arbitration to force compliance with the terms of the condominium documents. Towing may also be an option, but you should consult with your association’s attorney before implementing a towing program. There is a rather strict statute that has to be followed before vehicles can be towed.

In addition, Florida law authorizes your local law enforcement agency to enforce violations relating to handicapped parking. Therefore, an additional alternative may be to contact the police to have the violator’s car ticketed.

Q: I live in a condominium complex which has a dock with approximately 5 spots for boats. We have 23 units in our condominium. Any owner is permitted to keep a boat at the dock, if the boat has proper insurance and registration. All slips are full, and we have established a waiting list for those who want to use the dock. We have considered installing finger piers at a cost of \$30,000.00 to end up with 11 slips. If we leave the 5 existing slips as “first come first served”, and sell the other 6 slips to owners who would like a deeded boat slip, is that legal and permissible in the State of Florida? M.E. (via e-mail)

A: Your question actually raises two important issues in Florida condominium law. First, you may know that the Florida Condominium Act requires that any “material alterations” or “substantial additions” to the common elements of a condominium may only be made by the association in accordance with provisions in the declaration of condominium, and if the declaration is silent on the issue, then 75% of all members must approve the alterations or additions. Therefore, the first requirement that must be met is to obtain the required approval from the membership before undertaking any construction or additions to the common elements. As an aside, any construction of additional boat slips must be performed in strict compliance with various local, state and federal permitting requirements.

Your proposal to construct boat slips upon the common elements of the condominium and to sell them to certain members may also be problematic. In addition to the “material alteration” statute discussed above, the Florida Condominium Act also prohibits the association from selling or acquiring any additional common elements unless the declaration, as originally recorded, provides for the authority to do so, and in the event the declaration as originally recorded does not address this issue, then the association must obtain the approval of all record owners of units, and all record owners of liens on any unit, in order to have the authority to sell common element property. There may be a leasing alternative to consider. This is an issue that your board should involve its legal counsel in prior to moving forward.

Mr. Adams concentrates his practice on the law of community association law, primarily representing condominium, cooperative, and homeowners' associations and country clubs. Mr. Adams has represented more than 600 community associations and serves as managing shareholder of the Firm's Naples and Ft. Myers offices.

Send questions to Joe Adams by e-mail to jadams@becker-poliakoff.com This column is not a substitute for consultation with legal counsel. Past editions of this column may be viewed at www.becker-poliakoff.com.