



**Save Time & Money-  
Mediate,  
Don't Litigate™**

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# Condominiums and Conflict

- Where to begin?!?
- Are community associations and conflict inextricably linked?
- Is there a guiding principle that board members, managers, and other professionals may utilize to frame their approach to conflict review and resolution?

*“We hold these truths to be self-evident, that all men are created equal, that they are endowed by their Creator with certain unalienable Rights, that among these are Life, Liberty and the pursuit of Happiness.”*

– Thomas Jefferson, the Declaration of Independence.

# Condominiums are Communities

- A lofty quote, but consider that condominiums are a microcosm of federal, state and local government structures.
- Life at the community is governed by “laws” – covenants, restrictions, rules, etc. – enforced by the elected or appointed board.
- In many ways, the administration of these “laws” is more important to condominium residents than higher levels of governance (municipal, state, federal) in terms of their immediate financial and personal impacts.
- The real-life implications of condominium governance are not something that should be minimized, particularly not by those who sit as fiduciaries of their neighbors’ trust on association boards.

# Condominiums are Communities, cont.

- By viewing association functions as “mini” governmental interactions, association board members, agents and advisors may gain a greater perspective of the potential impacts of their decisions.
- To be sure, living at a condominium necessarily means that one will have to abide by certain rules and regulations. It is also inevitable that some of these restrictions will curb individual freedom and autonomy.
- However, simply because there are rules and regulations in place does not mean that residents should feel uncomfortable in their own homes. (Back to Jefferson – Pursuit of Happiness)
- So, what does that mean for us? How do we reconcile rules and individual freedom/choice?

# Mitigate, Don't Litigate

- An alternative title for this program may have been: “Mitigate, Don't Litigate.”
- Oftentimes, community association conflict arises from misconceptions or ignorance of the interplay of community restrictions and individual freedoms.
- “I didn't know” is not an excuse, but it may be a reason. The first step in conflict mitigation is educating residents and prospective residents of what community association life is all about.
- *An ounce of prevention*: Handbooks, closing packages, welcome meetings, newsletters, web-postings, etc.

# Mitigate, Don't Litigate, cont.

- These efforts may cut down on unnecessary (and costly) disputes between owners and associations.
- However, if we could mitigate all association conflict, we wouldn't be sitting here today.
- There will always be incidents where an individual's personal choices conflict with community regulations/harmony.

# Rules are made to be...

- Broken? (Hopefully, not at your association.)
- However, the first step to good governance and conflict mitigation is ensuring that your rules, restrictions and covenants are:
  - **Lawful** – Some provisions, particularly in older governing documents may not be consistent with or enforceable under applicable federal or state law.
  - **Reasonable** – Draconian mandates that drastically exceed customary restrictions may be subject to challenge; however, there will be a time and a place for absolute prohibitions, etc.
  - **Consistently and Evenly Enforced** – It is important to be sure that your associations consistently and evenly enforce rules and restrictions to the best of their ability.

# Rules are made to be... cont.

- Know your rules. All board members should be familiar with the covenants, restrictions and policies of their associations.
- Revisit and revise periodically. (But not all the time)
- Consider a due process / enforcement policy:
  - Verifying complaints and threshold enforcement inquiries;
  - Notice and opportunity to be heard;
  - Measured schedule of fines, fees, etc.
- You've done it all! Yet despite your efforts, you still face difficult/disruptive individuals, so what now?

# Don't Use a Cannon to Kill a Fly

- Responses to unit owner violations should be measured/tailored.
- This may require a case-by-case review of the issue, and will certainly require some degree of fact finding.
- Resist the urge to “throw the book” at the first sign of a violation:
  - What is the nature of the violation, who has been disturbed?
  - How many residents has the violation impacted, what are the consequences?
  - Are there any extenuating circumstances that may require leniency or careful consideration? (Reasonable accommodations, etc.)
  - Can we verify/prove the violations?

# Don't Use a Cannon to Kill a Fly, cont.

- Once a complaint has been verified, and the Board has decided to proceed with enforcement action:
  - Notice/warning from the Board or Agent
    - First time offenses, minor offenses, etc.
    - Fines and outline of potential next steps.
  - Legal Enforcement Letter – Cease and Desist – Demand Notice
    - Review facts with counsel and provide supporting evidence.
    - Demand notice – cease and desist ongoing violations, notice of past violations.
    - Impose fines and fees (note on attorneys' fees and costs).
    - Consider a bond if documents allow.

# Now What?

If violations or disputes persist after notices, fines and fees (or after such other due process mechanisms the association may have in place), what is the next step?

- **Litigation** – “The Nuclear Option.” Sometimes, it will be necessary to enforce covenants by legal action, but a board should carefully consider the costs, time, and other issues associated with litigation.
- **Arbitration** – “Diet litigation.” Arbitration is a binding process which may be required under some condominium documents. It can be nearly as expensive and time consuming as litigation.
- **Mediation** – The subject of our discussion today. For reasons you will hear, often the most expedient, economical and equitable way of resolving disputes and maintaining community harmony.