For condominiums and HOAs, mediation and arbitration are not only good time and money saving ideas, but in many states, like Florida, they are the law. As regards condominium associations, Florida Statute 718.1255 deals with and defines processes for alternative dispute resolution, voluntary mediation, mandatory non-binding arbitration, and legislative findings. Statute 718.1255 (4)(g) states:

The purpose of mediation as provided for by this section is to present the parties with an opportunity to resolve the underlying dispute in good faith, and with a minimum expenditure of time and resources.

In HOAs, Florida Statute 720.311 dispute resolution states:

The Legislature finds that alternative dispute resolution has made progress in reducing court dockets and trials and in offering a more efficient, cost-effective
option to litigation. At any time after the filing in a court of competent jurisdiction of a complaint relating to a dispute under ss. 720.301-720.312, the court may order that the parties enter mediation or arbitration procedures.

MEDIATION AND ARBITRATION:
WHAT’S THE DIFFERENCE?

Mediation is basically a discussion with a referee who does not make decisions, but only tries to bring the parties together to some sort of reasonable, mutual agreement that settles a dispute. The mediator is not a judge or lawyer—they may be or may have been in their past—and does not admit evidence or make rulings. The mediation often—more often for our organization—separates the parties into different rooms, and the mediator goes from room to room to present the other parties’ views and offers. What the mediator does not do is include nasty, threatening language thrown back and forth, but keeps the parties separated so that yelling, threatening, and cussing doesn’t completely stall any possibility of settlement.

Arbitration is a bit like “Judge Wapner” where an arbitrator is agreed to or assigned by the courts and acts like a judge. He/she may be a retired judge, lawyer, pastor, psychologist, engineer, architect, or even a school teacher. In arbitration, the arbitrator usually does have some experience in the field that they are judging. For instance, if there was a dispute between a condominium association and a large contractor, an engineer, architect, or contractor may be the best “judge” if the argument concerns a technical issue. There are two types of arbitration: binding and non-binding, and the differences are exactly what it sounds like. In binding arbitration, whatever the “judge” rules is final, and in non-binding arbitration, if both parties don’t like the ruling, they can still head off to court.

In binding arbitration, the arbitration rarely lasts more than one day, possibly two days if there are witnesses. The entire arbitration process is typically completed in less than two months. Legal bills are minimal, whereas typical court litigation can easily go on for three to five years. Obviously, I am prohibited from mentioning names of clients, but we did have a client in a dispute of more than $100,000 initially. After five
years because of egos, the legal fees on each side ran up to $500,000. This dispute was covered by the prevailing party rule where the prevailing party wins the dispute and wins attorney fees. The losing party, in this instance, was on the hook for more than one million and it took his company into bankruptcy.

The state has some findings on all of this, but the summation is: arbitration and mediation puts egos on detour as well as out-of-control legal fees. The state also gains in this plan because it frees up the courts, which are seriously backlogged.

There are some rules in mediation and arbitration but not at all like courtroom rules. The mediator, for instance, will not listen to or look at lengthy legal arguments because he does not judge. Instead, the parties judge themselves and make their own evaluations of what will and what won’t work for them. The arbitrator generally will allow lawyers to be present, but he will often limit their objections and then only after one party is finished speaking. Jumping up and down on every other word with “your honor I object” is not going to happen. Typically, a good arbitrator will lay down the rules at the beginning, and the parties or lawyers will follow the rules.

Once an agreement is reached in mediation, the mediator writes up an “outline only” of the agreement, and the lawyers, if any are present, put it in legal format. The mediator submits the agreement in a very simple form to the judge and both parties sign the agreement. In arbitration, the arbitrator generally takes a week or so to review what evidence has been presented and makes his/her ruling. A good mediation or arbitration occurs when both parties walk away not completely satisfied—because they didn’t get everything they wanted—but both parties can live with the agreement.

More often than not, condominium lawyers support mediation but are resistant to arbitration, especially binding arbitration. My personal experience is that condominiums and the contractors usually do better with arbitration as opposed to litigation because of the great litigation fees. Obviously, if the dispute involves very large numbers, litigation may be the only answer. A few years back we had a mediation case in Cape Canaveral where the association wanted one million dollars, and the contractor wanted to pay them nothing. We ended up with about $350,000 and lawyers were present, but the lawyers knew and liked each other so the negotiations were reasonable. Both parties were not happy, but both shook hands and walked away reasonably satisfied.

Because of the audience of this publication, we are limiting the discussion to HOA and condominium disputes, but the same theories apply to family matters and even disputes between retailers and customers. To save time, effort, money, and surely aggravation, mediation and arbitration are alternatives worth considering in dispute resolution.

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