

When Conflict Arises: How Alternative Dispute Resolution (ADR) Keeps Communities Moving Forward

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ADR is applicable
have changed
over the years."*



New Jersey Law requires that a community association provides a fair and efficient procedure to resolve disputes between individual unit owners and the association and between unit owners as an alternative to litigation, commonly known as alternative dispute resolution or Alternative Dispute Resolution (ADR). The kind of disputes to which ADR is applicable have changed over the years.

The language in the New Jersey Condominium Act (the "Condominium Act") requires that a condominium association provide ADR regarding "housing related disputes". The language in the Planned Real Estate Development Full Disclosure Act does not include the reference to "housing related disputes". Therefore, almost any dispute was subject to ADR in a community which was not a condominium community. The Condominium Act specifically requires that prior to the imposition of a fine, ADR must be offered.

The Radburn Regulations specifically require that ADR be offered to a unit owner at least 30 days prior to the election of directors /trustees if that owner is delinquent in the payment of monies owed to the association more than 30 days prior to the meeting date. Radburn also requires that ADR be afforded when a board member is subject to removal for violating a confidentiality agreement.

The *Twin Rivers* Appellate Division decision, which was issued in 2007, clarified that one could only request ADR for a claim of special harm affecting that person. An owner was not authorized to request ADR on behalf of a group of individuals within a community. The court also held that excluded from ADR were requests based on the board's authority to adopt a rule and/or business type decisions (i.e. which contractor to hire, annual budget). The *Bell Tower* Appellate Division decision in 2011 held that "housing-related disputes" refers to any dispute arising directly

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from the condominium relationship, including the collection process.

Once the request for ADR is received and accepted, the process will typically move towards resolution

of the dispute if all parties approach the hearing with an open mind and are flexible in their positions. Focusing on “principles” over “positions” tends to produce the best opportunity for a resolution. Mediation which focuses on one’s “position” tends to be less productive because participants tend

to be locked into positions with little flexibility.

Disputes have become more difficult to resolve recently especially when there is a reluctance or simple unwillingness to consider other options available. A principled mediation seeks to separate the person from the “problem” by looking at the substance of the issue rather than the relationship between the parties, focusing on communication rather than emotions. The interests of the participants rather than any position held should then be evaluated in an attempt to identify shared goals rather than reasons for the conflict. Available options should

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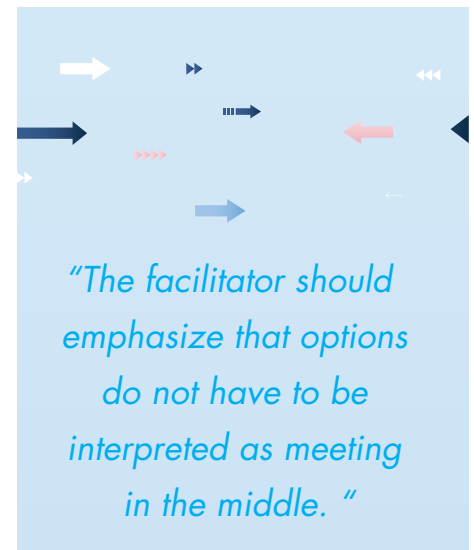
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be developed collectively. During the course of an ADR hearing, the facilitator should question the participants why a proposed option will or will not resolve the issue. The facilitator should emphasize that options do not have to be interpreted as meeting in the middle. The facilitator and parties should keep in mind that some obstacles to the evaluation of options presented are premature judgment or making up one’s mind that something will not work, there is only one possible

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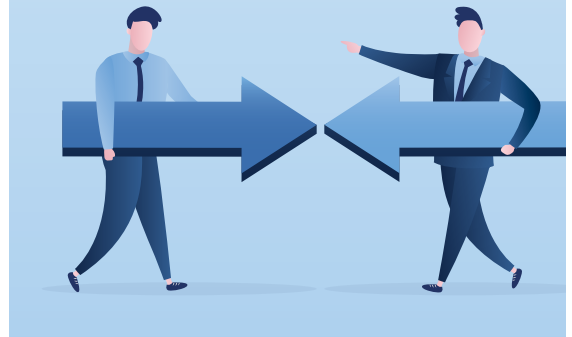
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resolution to the dispute, or the resolution of the problem is the other participants' problem. No preconceived judgement should come into play. Both participants should gain something which will make any resolution easier to implement. Once again, evaluating the interests of the participants, not their positions, attempts to develop options and evaluates such options independently and objectively. This process of gathering information, discussing and arriving at a mutually satisfactory resolution should include basic interests and fair standards. This process of discussing principles rather than positions may result in a resolution quickly, may take some time to develop once the mindset of the parties changes or not at all. Principled mediation tends to be successful when fairness is evident in the standards and procedures to be discussed. ■

"No preconceived judgement should come into play."



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