Becker & Poliakoff

“Legislative Changes Opens the Door to New Options for Resolving ‘Disputes’ In Condominium and Cooperative Associations,” CAI South Gulf Coast Magazine

January 5, 2022

By: Jennifer L. Biletnikoff

Earlier this year, the Florida legislature passed changes to Florida’s Condominium Act (Chapter 718) the Cooperative Act (Chapter 719), and the Homeowners Association Act (Chapter 720), Florida Statute. These amendments went into effect on July 1, 2021 and opened the door to allow condominium and cooperative associations a new option for addressing disputes between unit owners and the association through presuit mediation. Previously, disputes between condominium associations and unit owners (or cooperatives and unit owners) were required to be submitted to arbitration through the Division of Florida Condominiums, Timeshares, and Mobile Homes of the Department of Business and Professional Regulation (the “Division”) before filing a lawsuit regarding any of the following issues:

(a) The authority of the board of directors, under this chapter or association document, to:

1. Require any owner to take any action, or not to take any action, involving that owner’s unit or the appurtenances thereto.
2. Alter or add to a common area or element.

(b) The failure of a governing body, when required by this chapter or an association document, to:

1. Properly conduct elections.
2. Give adequate notice of meetings or other actions.
3. Properly conduct meetings.
4. Allow inspection of books and records.

(c) A plan of termination.

Before the 2021 legislative changes, the parties to an arbitration could request a referral to mediation; however, the request for mediation came with a potential “cost.” If the parties attended mediation but were unable to resolve their dispute, unless all parties agreed in writing to continue the arbitration proceeding, the

arbitration was dismissed. The parties were then forced decide whether to proceed with filing a lawsuit to resolve their dispute. However, with the new legislative changes, a party to a dispute in a condominium or cooperative association has the option of either petitioning the Division for nonbinding arbitration or initiating presuit mediation. Now that there are options to consider when it comes to alternative dispute resolution, it is important to know the difference between arbitration and mediation.

Mediation and arbitration are both forms of “alternative dispute resolution” or methods of resolving disputes outside of a courtroom. Despite what you may see on TV, lawsuits are often extremely time consuming and expensive; not all disputes can be resolved in a sixty-minute time slot like they are in Law & Order. As such, alternative dispute resolution can provide a more expedient and less costly option to formal litigation.

Mediation is a confidential process that is conducted with an independent, trained, neutral third-party mediator. The mediator does not give legal advice and does not make any decisions regarding the dispute. Instead, the mediator acts to facilitate discussion between the parties and assists them in reaching an agreed upon resolution. In reaching an agreement, the parties have some degree of flexibility and can come up with creative solutions that may not be available remedies in court. In mediation, the parties are in control of their own destiny; they cannot be forced to accept a resolution in mediation. However, if they are able to resolve their dispute, the parties will document their agreement in the form of a written settlement agreement which will be binding in the same manner as a contract.

Unlike mediation, arbitration is more similar to litigation. A case in arbitration begins with the filing of a petition for arbitration. The petition must cite, among other things, that the petitioner gave the respondent advance written notice of the specific nature of the dispute; a demand for relief, and a reasonable opportunity to comply; and a notice of intention to file an arbitration petition or other legal action in the absence of a resolution of a dispute. Once the petition is reviewed by the Division, a copy of the petition is served to all of the respondents. The arbitrator is typically required to conduct a hearing within thirty (30) days of the case being assigned unless a continuance is granted for good cause shown. You can call witnesses and present evidence at an arbitration hearing; however, the arbitration hearing typically has a less formal “feeling” than a trial. There will be a ruling where one party “prevails”, as determined by an arbitrator. An arbitration decision is then generally rendered within thirty (30) days after a final hearing. The arbitration decision is only final in those disputes in which the parties have agreed to be bound by the arbitrator’s decision. However, an arbitration decision can also become final if a complaint for a trial de novo is not filed in court within thirty (30) days of the arbitration decision.

Arbitration does not give parties the flexibility and control over the resolution process that is provided in mediation. However, arbitration does provide a forum for resolving disputes that is typically more efficient and more cost effective than litigation. If you find yourself involved in dispute that is subject to alternative dispute resolution under the Condominium Act (Chapter 718) or the Cooperative Act (Chapter 719), Florida Statutes, you should discuss with your association’s legal counsel whether arbitration or mediation provides a better forum to resolve your particular issue.

To read the original CAI Community Voice article, please click here.

Jennifer Horan is a Board Certified Specialist in Condominium and Planned Development Law and represents condominium, cooperative, mobile home and homeowners' associations located throughout Southwest Florida including Collier, Lee, Sarasota and Charlotte Counties. She has particular experience in covenant enforcement and foreclosure law, and has also practiced in the areas of commercial, business and tort litigation. To learn more about Jennifer, please click here.
