



Community Association Dispute Resolution 101

MULCAHY Community Association Cheat Sheet®

BRINGING ANSWERS
TO COMMUNITY
ASSOCIATIONS

This publication discusses significant points of law as they apply to community associations and is not intended to offer specific legal advice or responses to individual circumstances or problems.

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INTRODUCTION

Numerous books and lectures have covered the topic of how to successfully negotiate. In a community association setting, the process of negotiating can take several forms – negotiating the terms of a contract with a vendor, negotiating a settlement with a homeowner, negotiating community strategy amongst the board, etc. If you listen to the experts, you'll notice several common themes, which you can implement into your community association negotiations.

TYPES OF NEGOTIATION STRATEGIES

Competitive/Positional Strategy: The competitive/positional strategy is a high-pressure, more confrontational negotiation technique, which seeks to establish a clear victory in the negotiations over the opposing party.

Integrative Strategy: The integrative strategy consists of joint problem-solving with the idea that the negotiation can result in both parties coming out on top.

Most of the best negotiators will have a wide range of negotiation skills, including skills from the competitive/positional strategy and the integrative strategy, and will apply those skills depending on the circumstances of the negotiation.

STEPS IN THE NEGOTIATION PROCESS

Step #1 – Perform an objective evaluation of the situation. Prior to engaging in a negotiation, you must perform an honest assessment of the strengths and weaknesses of all parties involved. People oftentimes focus on the weaknesses of the opposing party, and overlook their own weaknesses in negotiations. The more you know about your own weaknesses, the better prepared you can be to address them in a meaningful way.

In negotiations, surprises are almost never positive. The more knowledge and understanding that you have regarding the strengths and weaknesses of all parties involved, the less likely you are to be caught off guard.

Step #2 – Engage in a dialogue with the other party or parties. While some people believe in leading with strength, and others prefer to listen and defer, one way or another the parties will need to engage in a dialogue for the negotiations to commence. If you've performed the objective evaluation suggested in Step 1, you should be comfortable with either initiating the dialogue or waiting for the other party to engage you.

Step #3 – Begin the Dance. Once engaged in a dialogue, the substance of the negotiations will begin. When it comes to negotiations, it's not one size fits all. Styles and methods of negotiation vary from person to person and can also vary based on the circumstances. However, there are several recommended guidelines that apply to just about any negotiation scenario:

- Apply what you've learned. If you completed Step #1, you should be armed with an understanding of the strengths and weaknesses of your position(s) and the other party's position(s), and you can use that knowledge to your advantage.
- Remove your ego! The ego gets the best of us in a lot of situations (both business and personal); however, if you learn to remove your ego from the situation, you are much more likely to see a positive result in your negotiations.
- Live by the Golden Rule. Show respect for others and conduct yourself in a professional manner. Remember that you are representing not only yourself, but also your board and your community.
- Focus on a Win-Win. In some negotiations, the parties are so focused on seeing the other side "lose" that they end up losing too. Instead, place your focus on a win-win scenario.
- Be a realist. In most negotiations, neither party will end up getting *everything* that they want. If both parties take that into account, the negotiations are more likely to move closer to a finalized deal.

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STEPS IN THE NEGOTIATION PROCESS *(continued from previous page)*

- Don't take things personally / Take the High Road. Don't let a perceived slight (or even a real slight) derail what could be a positive outcome, and if you do feel slighted, don't attempt to return the favor.

Step #4 – Finalize and Formalize. Regardless of how amicable or friendly a negotiation may seem, the parties should always confirm agreement on the final terms and formalize those terms, in writing. The more clear and concise the finalized/formalized terms are, the less likely you are to run into misunderstandings.

Step #5 – Evaluate and Grow. Whether it's a week, month or year after the negotiation has finalized, it can be helpful to self-evaluate your performance and learn from your mistakes so that you can improve your future performance. Again, the self-evaluation must be honest and objective, otherwise you'll end up committing the same errors over and over again.

ALTERNATIVE TO NEGOTIATION

What if negotiations do not result in resolution? What are some of your alternatives?

Mediation: Mediation is a type of facilitated negotiation where a neutral party (a mediator) assists the parties in reaching a resolution. Mediation provides a fairly flexible venue to resolve disputes. So long as all parties agree to the terms and effectively consent to their participation in the mediation process, the mediation process can take virtually any form.

Arbitration: Arbitration is an adversarial setting where a dispute is decided by an arbitrator. Arbitration is similar to litigation; however, some of the primary differences are (1) arbitration has less formal rules; and (2) arbitration is more binding than litigation because you generally give up your right to appeal the decision.

Administrative Law Proceedings: An administrative proceeding is a non-judicial resolution of a dispute. In Arizona, Administrative Law Judges hear a variety of disputes, including HOA disputes. An Administrative Hearing is similar to a trial; however, it is less formal.

HOMEOWNERS ASSOCIATION DISPUTE PROCESS IN ARIZONA

See: <http://re.state.az.us/HOA/HOA.aspx>

In 2011, the Arizona Legislature passed legislation providing Arizona homeowners and condominium and planned community associations (HOA's) a venue for resolving disputes. These administrative procedures provide an alternative to the civil court system and do not limit the legal rights of the parties to further pursue matters. This legislation became law on July 20, 2011. In 2016 and 2017, the Arizona Legislature passed legislation moving the Homeowners Association (HOA) Dispute Process to the Arizona Department of Real Estate (ADRE). Link to legislation The Arizona Office of Administrative Hearings (OAH) will accept all cases as referred by the ADRE, and schedule a Hearing date before an Administrative Law Judge (ALJ).

- All Petitions must be in writing on the form approved by ADRE. Click here to fill out the form.
- Only an owner or association may Petition the Department for a hearing.
- An owner's Petition (complaint) must be regarding a dispute between the owner and the association. (Do not file against an individual or individual Board member). An association's Petition (complaint) must be regarding a dispute between the association and the owner.
- The Department cannot accept Petitions (complaints) filed by or against renters, non-owners, directors, representatives, other homeowners or community management companies.
- An incomplete or inaccurate Petition cannot be processed, and will be returned to Petitioner.

FEES (filing fee amounts change frequently so check the ADRE website to ensure accuracy of filing fee amounts)

- A single issue complaint is \$500. (The new reduced fee is effective July 1, 2016)
- Each additional issue complaint is \$500. (Maximum of four total issues)
- Filing fees are NON-REFUNDABLE, except when the petition is dismissed at the request of the Petitioner before a hearing is scheduled, or by stipulation of the parties before a hearing is scheduled. A.R.S § 32-2199.01 (B).

Litigation: Litigation is the process of taking legal action to settle a dispute through a formal court case. Although litigation can be time-consuming expensive and risky, sometimes it may be the best (and/or only) option.