



## **Mediation can help residents live under condominium rules**

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The state Supreme Court affirmed the right of condominium homeowner associations to enforce their rules so long as they are not "unreasonable or oppressive," finding, essentially, that the policies adopted by the Twin Rivers Association in East Windsor, set forth in its rules and regulations, do not violate the state Constitution.

That's fine, so far as it goes. But what about actually "ensuring peace and harmony among neighbors," as Barry Goodman, the lawyer who represented the Twin Rivers Association, observed would now occur? There are two issues here, one having to do with the writing and amending of rules and regulations and the second having to do with living under them. Despite the unanimity of the court's decision, the test of reasonableness keeps the door open to challenges. It suggests that the authority of homeowners' associations should be exercised with caution.

There are more than 10,000 people living in that East Windsor complex. Even if they are restricted in some of the rights they would otherwise have if they lived outside of the community, they are still likely to have neighborhood spats, encounter problems with issues that arise from regulations governing their units and the appearance of them, differences of opinion concerning the use of common property and so forth. How are these disputes to be handled?

Don't communities want to have processes in place for managing these kinds of disputes, consistent, of course, with law and community rules? Does every unresolved difference, dispute and conflict need to wind up as an "association matter" or a contest in court? In short, how can association authority be effectively exercised?

Process is key. Which means establishing ways for residents to be heard when the rules and regulations are being developed in the first instance — to maximize compliance once they are in place — and for handling disputes that inevitably arise in a manner that is both fair and efficient.

There are good models to use, including community-based mediation programs that have been around for the last several decades. They provide trained neutral mediators to manage discussions that encourage problem-solving. Many municipalities and judicial vicinages in New Jersey have already put similar programs in place for dealing with neighborhood disputes.

These programs can have important integrative effects. Mediation, particularly, can bring into constructive dialogue the legitimate but divergent interests that require reconciliation if there is to be

reasonable agreement with respect to how and where and under what conditions people live. Agreements reached in this forum are more likely to be implemented because they have the support of the individuals and groups who, having participated, are committed to making their agreements work.

Some states have created frameworks that encourage and support negotiation and mediation in condominium associations. New Jersey has tried for years to make progress on this front, both by initiatives in the Department of Community Affairs and through legislation. (Several bills are pending.) Because there are standoffs between organized condominium associations and their industry representatives on the one hand and the various individuals and groups that have sought greater freedom on the other, these proposed statutory and agency frameworks have gone, essentially, nowhere.

Perhaps, now, with this decisive ruling by the Supreme Court, we can put into place processes that can work, with oversight and support from the state (for training, design and implementation issues), not to substitute for association authority but to provide a means to exercise that authority wisely and well.

Governance is an issue that reaches beyond Twin Rivers. For the 1.3 million New Jersey residents — closing in on 40 percent of all private homeowners — and for the more than 50 million who live in similar arrangements throughout the country, there is the potential for this court decision to have a significant impact.

But having the authority to decide is only part of the picture. It also means understanding that effective mechanisms for managing differences can strengthen the community bonds that make life in condominium communities more livable, reasonable and, for some particularly, less oppressive. Giving people an opportunity to be involved in developing the rules that govern their living arrangements, and a fair and effective process for airing differences, provides for a quality-of-life difference that can help to build and sustain community norms and values.

Peace and harmony are more likely to be achieved where decision-making and conflict resolution processes — reflecting these values — are in place. Affirming the authority of one body to have even reasonable dominion over the whole won't do it.

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