

# Homeowner Association vs. Building Developer

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Once upon a time there was a Homeowners Association (HOA). They ran a clean complex and collected the residents' dues without problem. All was peaceful. Suddenly, disaster struck. An enormous earthquake hit and changed everything. Now the pool leaks into the garage, residents' units are damaged and leaking, and many have been forced to move out. One more thing... everyone sued everyone else.

The HOA sued the developer, after all, the building was supposed to be safe. The developer sued his subcontractors who actually built the complex. The residents all sued the HOA, and some even sued each other! In this particular case, the HOA had been holding proceeds from the insurance company because the individual homeowners were in a dispute threatening litigation over to whom the money belonged. There was also a dispute over whether the Board had maintained enough reserves (not uncommon in this kind of conflict).

Litigation was rampant. The HOA became a hotbed for fighting and the Board of Directors became litigation supervisors, instead of running the day-to-day business of the Association.

Mediation to the rescue! The mediator sat down with the HOA, the builder, the residents, and everyone's attorneys and insurance carriers in an attempt to help everyone identify what they really wanted. The mediator kept everyone talking rationally and working toward a concrete solution, rather than allowing the threats of litigation and arguing and pointing fingers to escalate. Through this process of brainstorming and negotiating, a solution was reached that satisfied everyone. Once people stopped targeting each other, and started targeting the problem, they began to resolve the problem through cooperation and collaboration.

You may ask why they are still dealing with earthquake repairs in July of 1996, since the earthquake was in January 1994. Welcome to our legal system and how inefficiently it operates in an overly litigious society. With the advent of the Three Strikes law, every repeat criminal has the incentive to take his or her case to court. The wait for a courtroom now runs about two years.

With all of this litigation, the case could have gone on for two and a half more years! The mediator met with them as a group first, and then met several times with each party separately. Each party admitted that he or she had contributed to the escalation, and identified an ideal resolution as well as whether or not he or she was willing to contribute financially to the resolution. From there, some collaborative negotiation took place ("I'll do this, if you'll do that.") and all was resolved in one day. Work that had stopped a year and a half prior was commenced within days and every homeowner was well under way to having their unit back in good shape.

Isn't it amazing what a little clear and open conversation can do! Please remember mediation next time you are entangled in a dispute, even if it is not as complex as this one.

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