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HBA LAUNCHES MEDIATION PROGRAM WITH NATIONAL CENTER FOR DISPUTE SETTLEMENT

MEDIATION AS A BETTER WAY TO SETTLE DISPUTES

Bob Morris, *HBA Executive Vice President*

A group of members of the HBA builder ranks recently met to discuss the need of finding a way to help the association's builder members to work with their home buyers in solving disputes resulting from the construction of new or remodeled residences.

The concern of entering into the State Sponsored Inspection Resolution Process (SSIRP) and the adverse publicity that seems to arise was part of the reasoning to begin the examination of what path might be most helpful.

In recent years, the utilization of the Residential Construction Liability Act (RCLA) has been a means of averting civic court action; however, the increasing criticism of arbitration as a means of staying out of the courthouse has brought much undue negativity about the value of arbitration to both parties. With the passage of HB 730, the SSIRP has stepped into the picture with a wary public viewing what should be private matters.

Understanding of the processes and the need to hasten the opportunity to solve disputes, our members met with representatives of the National Center for Dispute Settlement (NCDS), a Dallas based organization that has developed mediation programs for many auto manufacturers. The mediation program is used to help solve the disputes that they and their auto buyers find themselves in.

In discussion with Lester Wolff, President of NCDS, he indicated that in nearly 80% of all disputes that they administer the mediations are solved without having to go on to either arbitration or litigation. This is an amazing statistic that does make sense if one realizes that the desire of each party is to find a way to solve the dispute, do the fix and get on with life.

Mediation vs. Arbitration

Mediation and arbitration are very different processes. In mediation, an impartial third-party helps disputants reach a mutually acceptable resolution. The mediator acts as a clarifier and a guide rather than a judge. Arbitration on the other hand,

involves an impartial neutral that is given the authority to reach binding decisions to which both sides agree to adhere.

Many disputing parties explore mediation first. It allows both parties to define the terms of the resolution and the direction of the relationship. Through mediation, parties will remain amicable and continue to do business, as the objective is to come to an agreement. Oftentimes, disagreements end amicably with simple mediation. In the event the mediator determines neither side is ready to compromise, the next step is to enter the Texas Residential Construction Commission (TRCC) developed State Sponsored Inspections Resolution Process. The down side to the SSIRP is that you are now functioning in the public light of the TRCC.

SSIRP and the RCLA

All of the acronyms can get confusing, but in this case the process can lead to Arbitration if the process does not work through the SSIRP. If a builder follows the proper procedures as set out in the SSIRP, and the builder and the buyer are unable to resolve their disagreement, then the next step is to enter into the RCLA, which will involve the arbitration process.

The essence of the Mediation process is that it is designed to take advantage of the fact that both parties are ready to solve the problem as opposed to spending untold hours, money, and emotion and letting someone else make the decision.

The findings by our group of members was that this is a program worth using. To that end the HBA/NCDS mediation program is ready to begin. HBA members will benefit from a \$100 case fee reduction in the mediation program and may register with NCDS (\$75 registration fee) to receive an additional \$100 reduction (for a total \$200 reduction).

To register with NCDS or for further information, please contact Jim Higginbotham at 972-283-9065 or Craig Olson at 214-638-2700 ext. 452.