

IMPORTANT HOMEOWNER NOTICE

SUMMARY OF INTERNAL DISPUTE RESOLUTION PROCESS AND ALTERNATIVE DISPUTE RESOLUTION PROCEDURES

I. ASSOCIATION'S INTERNAL DISPUTE RESOLUTION PROCESS ("IDR").

In accordance with Civil Code Section 5900 et seq., the Association has adopted the following internal dispute resolution process to be followed by the Association and owners in connection with disputes relating to the enforcement of the Association's governing documents, the Davis-Stirling Common Interest Development Act (Civil Code Section 4000 et seq.) and Section 7110 et seq. of the Nonprofit Mutual Benefit Corporation Code (collectively, the "Disputes").

Either party to a Dispute may invoke the following procedure:

- (1) The party may request the other party to meet and confer in an effort to resolve the dispute. The request shall be in writing.
- (2) An owner may refuse a request to meet and confer. The Association may not refuse a request to meet and confer.
- (3) The Association's Board of Directors shall designate a member of the Board to meet and confer.
- (4) The parties shall meet promptly at a mutually convenient time and place, explain their positions to each other, and confer in good faith in an effort to resolve the dispute.
- (5) A resolution of the dispute agreed to by the parties shall be memorialized in writing and signed by the parties, including the Board designee on behalf of the Association.
- (6) The agreement reached binds the parties and is judicially enforceable if both of the following conditions are satisfied: (a) The agreement is not in conflict with law or the governing documents of the common interest development or association; and (b) The agreement is either consistent with the authority granted by the Board of Directors to its designee or the agreement is ratified by the Board of Directors."

Please note that a member of the association may not be charged a fee to participate in the process.

II. ALTERNATIVE DISPUTE RESOLUTION ("ADR").

Please be advised that California Civil Code Section 5925 et seq. Requires that the Association and owners endeavor to submit certain types of disputes to ADR prior to initiating a lawsuit. This notice merely provides a summary of the statute. If there is a dispute which may require ADR pursuant to Civil Code Section 5925 et seq., please review all of the provisions of the statute or seek your own independent legal counsel.

PARTIES BOUND BY THE STATUTE

The parties required to comply with the new statute are the Association (through the Board of Directors) and any owners of record.

DISPUTES SUBJECT TO THE STATUTE (QUALIFYING DISPUTES)

Section 5930 provides that the Association or owners may not file an enforcement action in the Superior Court unless the parties have endeavored to submit their dispute to ADR. An “enforcement action” is defined as a civil action or other proceeding for any of the following purposes:

- 1) Enforcement of the Davis-Stirling Common Interest Development Act (Civil Code Section 4000 et seq.);
- 2) Enforcement of the California Nonprofit Mutual Benefit Corporation law, commencing with Corporations Code Section 7110; or
- 3) Enforcement of the Association’s governing documents.

Where, however, an owner has a private dispute with another owner or a tenant, or the Board has a dispute with a third party such as a landscaper, such a dispute is not within the confines of the statute.

DISPUTES SPECIFICALLY EXCLUDED FROM THE STATUTE

The ADR statute applies only to an enforcement action that is solely for declaratory, injunctive or writ relief, or for that relief in conjunction with a claim for monetary damages not in excess of \$5,000. The following types of disputes are specifically excluded from being required to resort to ADR:

- 1) A Small Claims action;
- 2) Assessment collection, except as provided for in Civil Code Section 5658;
- 3) Claims for money damages in excess of \$5,000 in conjunction with a claim for declaratory, injunctive or writ relief;
- 4) Action for preliminary or temporary injunctive relief; and
- 5) The filing of a cross-complaint in response to a complaint already filed.

COMPLIANCE PROCEDURES

A. INITIATING PARTY. The party pursuing the dispute, prior to filing any lawsuit, must serve on the other party a “Request for Resolution” including the following information and language:

- 1) A brief description of the dispute;
- 2) A request that the matter be submitted to ADR;

- 3) A notice that the party receiving the Request for Resolution (the “Responding Party”) is required to respond thereto within thirty (30) days of receipt or it will be deemed rejected; and
- 4) If the party on whom the Request is served is an owner: a copy of Civil Code Section 5925 et seq.

B. SERVICE. A Request for Resolution may be served by personal delivery, first-Class mail, express mail, facsimile transmission or other means reasonably calculated to provide the Responding Party actual notice of the Request.

C. RESPONDING PARTY’S OBLIGATION. Upon receipt of a Request for Resolution, the Responding Party, whether the Association or an owner, has thirty (30) days in which to either accept or reject the Request. In the event no such response is received, the Request is deemed “rejected.”

D. TIME FOR COMPLETION OF ADR. Where the Request is accepted, the parties must complete the ADR within ninety (90) days of receipt of the acceptance. However, the parties can stipulate in writing to extend this period.

E. COST OF ADR. The cost of ADR shall be borne by the parties.

F. TOLLING OF STATUTE OF LIMITATIONS. If a Request for Resolution is served before the end of the applicable statute of limitations, the time limitation is tolled for certain periods specified in Civil Code Section 5945.

G. CERTIFICATE. In the event that a lawsuit is eventually commenced, the party filing must file with the initial pleading a certificate stating that one or more of the following conditions is satisfied: (1) alternative dispute resolution has been completed in compliance with 5925 et seq.; (2) one of the parties to the dispute did not accept the terms offered for alternative dispute resolution; or, (3) preliminary or injunctive relief is necessary.

CONSEQUENCES FOR FAILURE TO COMPLY WITH THE ADR LAW

The failure to file the aforementioned certificate with the Court is grounds for a demurrer or motion to strike unless the Court finds that dismissal of the action for failure to comply would result in substantial prejudice to one of the parties. Additionally, in awarding attorney’s fees and costs, a court may consider whether a party’s refusal to participate in ADR before commencement of the enforcement action was reasonable. As a result, it is important to seek independent counsel in the event that you, as an owner have further questions.

Failure of a member of the association to comply with the alternative dispute resolution requirements of Section 5930 of the Civil Code may result in the loss of your right to sue the association or another member of the association regarding enforcement of the governing documents or the applicable law.

The preceding summary has been provided in accordance with Civil Code Section 5965.