

## **DISPUTE RESOLUTION PROCEDURES**

### **Internal Dispute Resolution – “IDR” – Civil Code Section 1363.810 and following**

By resolution of the Board of Directors, the Association hereby adopts the following procedure identified in California Civil Code Section 1363.840 for the internal resolution of disputes between the Association and its members involving their rights, duties, or liabilities under the governing documents of the Association, the Davis-Stirling Common Interest Development Act, and California Nonprofit, Mutual Benefit Corporation law. This procedure supplements other procedures under California law for alternative dispute resolution (e.g., mediation or arbitration) of such disputes. This procedure is intended to be fair, reasonable and expeditious within the meaning of Civil Code Section 1363.820(a).

#### Section 1363.840. Default Dispute Resolution Procedure

- (a) This section applies in an association that does not otherwise provide a fair, reasonable, and expeditious dispute resolution procedure. The procedure provided in this section is fair, reasonable, and expeditious, within the meaning of this article.
- (b) Either party to a dispute within the scope of this article 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) A member of an association 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.
- (c) An agreement reached under this section binds the parties and is judicially enforceable if both of the following conditions are satisfied:

- (1) The agreement is not in conflict with law or the governing documents of the common interest development or association.
- (2) 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.
- (d) A member of the association may not be charged a fee to participate in the process.

Additionally, the above procedure shall be supplemented by the following terms:

1. The Board of Directors shall have discretion (but shall not be obligated) to designate more than one member of the Board and/or the Association's managing agent to meet and confer with the member pursuant to this procedure.
2. For an agreement reached pursuant to this procedure to become binding on the parties and enforceable in court, it must be signed by the homeowner and a Board representative participating in the procedure and then ratified by the Board of Directors.

**Alternative Dispute Resolution – “ADR” – Civil Code Section 1369.510 and following**

1. “Alternative Dispute Resolution” (“ADR”) means mediation, arbitration, conciliation, or other non-judicial procedure that involves a neutral party in the decision-making process. The form of ADR chosen may be binding or non-binding with the voluntary consent of the parties.

2. The Association or an owner or member may not file a lawsuit to enforce the laws relating to homeowners associations or the Association governing documents in the superior court unless both sides have endeavored to submit their dispute to ADR. ADR only applies to an enforcement action seeking declaratory, injunctive or writ relief, OR for that relief in conjunction with a claim for money damages not in excess of Five Thousand Dollars (\$5,000).

3. The requirement to try to ADR does not apply to small claims actions or assessment disputes.

4. A party wishing to initiate the ADR process shall serve all other parties to the dispute with a Request for Resolution, containing the following:

- a. A brief description of the dispute between the parties;
- b. A Request for Alternative Dispute Resolution;

c. A notice that the party receiving the Request for Resolution is required to respond within 30 days of receipt or the Request will be deemed rejected;

d. If the party on whom the Request is served is a member of the Association, a copy of Civil Code Sections 1369.510-1369.590.

5. Service of the Request for Resolution shall be by personal delivery, first class mail, express mail, fax, or other means reasonably calculated to provide the party on whom the Request is served actual notice of the Request.

6. The party on whom the Request for Resolution is served has 30 days following service to accept and reject the Request. If the party does not accept the Request within that period, the Request is deemed rejected.

7. If the Request for Resolution is accepted, the parties must complete the ADR process within 90 days after the party initiating the Request receives the acceptance, unless this period is extended in writing and signed by both parties.

8. The cost of ADR shall be borne by the parties.

9. If a Request for Resolution is served before the end of the applicable time limitation for commencing an enforcement lawsuit, the time limitation is tolled during the following periods:

a. 30 days from receipt of the Request;

b. If the Request for Resolution is accepted, 90 days after the party initiating the Request receives the acceptance, including any extension of time agreed to in writing by the parties.

10. If an enforcement lawsuit is filed, the party filing the suit shall also file a certificate stating one or more of the following:

a. ADR has been completed;

b. One of the other parties to the dispute did not accept the terms offered for ADR;

c. Preliminary or temporary injunctive relief is necessary.

11. Failure to follow a certificate is grounds for demurrer or motion to strike.

12. After an enforcement lawsuit is filed, the parties may agree in writing that the matter may be referred to ADR.

13. In an enforcement lawsuit in which fees and costs may be awarded pursuant to Civil Code Section 1354, the court may consider a party's refusal to participate in ADR in determining the amount of the award.

14. Failure of a member of the Association to comply with ADR requirements of Section 1369.520 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.