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**HOMEOWNER ASSOCIATIONS  
DISPUTE RESOLUTION DISCLOSURE**

# DISPUTE RESOLUTION PROCEDURES

SUMMARY OF CALIFORNIA CIVIL CODE SECTIONS 5900-5920 AND SECTIONS 5925-5945  
RELATING TO ENFORCEMENT OF GOVERNING DOCUMENTS THROUGH  
INTERNAL DISPUTE RESOLUTION AND/OR ALTERNATIVE DISPUTE RESOLUTION

California Civil Code Section 5975 addresses the right of an association or a member of the association to enforce the governing documents of the Association. Other areas of the Civil Code address other dispute resolution processes, both "internal" (commonly called IDR or meet and confer) and "external" (commonly called ADR which stands for Alternative Dispute Resolution).

1. The Association must adopt procedures that allow the Board or any Owner to request a meeting with a director or directors to attempt to resolve a dispute between them. This document contains the policy adopted by the Board for Internal Dispute Resolution Procedures per Civil Code Sections 5900-5920; and/or
2. The Association and/or any Owner must attempt to resolve matters by means alternative to litigation (ADR) prior to filing a lawsuit. This document summarizes the provisions of Civil Code Sections 5925-5945, as originally introduced in 2005 and reiterated in the reorganized Davis Stirling Act as of 1/1/2014.

These statutes encourage parties to a dispute involving enforcement of an association's governing documents to first have an informal meeting with directors and the owner(s) involved, and then, if not settled and litigation is considered, submit the dispute to a form of alternative dispute resolution (ADR) such as mediation or arbitration, prior to filing a lawsuit. The intent of the statute is to promote efficient, speedy and cost-effective resolution of disputes, to better preserve community cohesiveness, and to channel disputes between the Associations and Owners away from the state's court system.



## **INTERNAL DISPUTE RESOLUTION REQUIREMENTS**

Pursuant to Civil Code, Sections 5900-5920, this Association has adopted procedures for Internal Dispute Resolution (also known as Meet and Confer). The procedure provided below is considered fair, reasonable, and expeditious, within the meaning of the aforesaid statutes. Either party to a dispute within the scope of this article (described below) 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 board shall designate a director 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. The member and association has the right to be assisted by an attorney or another person to help them explain their positions, at their own cost.
5. A resolution of the dispute agreed to by the parties shall be memorialized in writing and signed by all parties, including the board designee on behalf of the association, and any such signed agreement is legally enforceable including any court proceeding.
  - a. An agreement reached under this section binds the parties and is judicially enforceable if both of the following conditions are satisfied:
    - i. The agreement is not in conflict with law or the governing documents of the common interest development or association.
    - ii. The agreement is either consistent with the authority granted by the board to its designee or the agreement is ratified by the board.
    - iii. A member may not be charged a fee to participate in the process.

These procedures apply to a dispute between an association and a member involving their rights, duties, or liabilities under this title, under the Nonprofit Mutual Benefit Corporation Law (Part 3 (commencing with Section 7110) of Division 2 of Title 1 of the Corporations Code), or under the governing documents of the common interest development or association.

These provisions do not replace the ADR option allowed by Sections 5925-5945 below relating to alternative dispute resolution as a prerequisite to an enforcement action (which means filing of litigation).



## **ALTERNATIVE DISPUTE RESOLUTION PROCEDURES**

"Alternative Dispute Resolution" means mediation, arbitration, conciliation, or other nonjudicial procedure that involves a neutral party in the decision-making process. The form of alternative dispute resolution chosen pursuant to this article may be binding or nonbinding, with the voluntary consent of the parties. The parties shall share the cost of these proceedings.

Neither an association nor an owner or a member is entitled to file an enforcement action in the superior court unless the parties have first endeavored to submit their dispute to alternative dispute resolution pursuant to the referenced statutes.

The requirements apply only to an enforcement action that is solely for declaratory, injunctive, or writ relief (meaning asking the court to interpret, determine or order something), or for that relief in conjunction with a claim for monetary damages that does not exceed five thousand dollars (\$5,000). These requirements do not apply to a small claims action. Except as otherwise provided by law, this section does not apply to an assessment dispute.

Any party to a dispute may initiate the process required by serving on all other parties to the dispute a Request for Resolution. The Request for Resolution shall include all of the following:

### **5925. DEFINITIONS**

- A. "Alternative dispute resolution" means mediation, arbitration, conciliation, or other nonjudicial procedure that involves a neutral party in the decision-making process. The form of alternative dispute resolution chosen pursuant to this article may be binding or nonbinding, with the voluntary consent of the parties.
- B. "Enforcement action" means a civil action or proceeding, other than a cross-complaint, for any of the following purposes:
  - 1. Enforcement of this act.
  - 2. Enforcement of the Nonprofit Mutual Benefit Corporation Law (Part 3 (commencing with Section 7110) of Division 2 of Title 1 of the Corporations Code).
  - 3. Enforcement of the governing documents.



### **5930. ADR PREREQUISITE TO ENFORCEMENT ACTION**

- A. An association or a member may not file an enforcement action in the superior court unless the parties have endeavored to submit their dispute to alternative dispute resolution pursuant to this article.
- B. This section 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 the jurisdictional limits stated in Sections 116.220 and 116.221 of the Code of Civil Procedure.
- C. This section does not apply to a small claims action.
- D. Except as otherwise provided by law, this section does not apply to an assessment dispute.

### **5935. REQUEST FOR RESOLUTION**

The Request for Resolution shall include:

- 1. A brief description of the dispute between the parties.
- 2. A request for alternative dispute resolution.
- 3. 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.
- 4. If the party on whom the request is served is the member, a copy of this summary or Civil Code sections 5925-5945.

Service of the Request for Resolution shall be by personal delivery, first-class mail, express mail, facsimile transmission, or other means reasonably calculated to provide the party on whom the request is served actual notice of the request. A party on whom a Request for Resolution is served has 30 days following service to accept or reject the request. If a party does not accept the request within that period, the request is deemed rejected by the party.

If the Request is accepted, the ADR must be completed within 90 days of receipt of the acceptance, unless the time is extended by agreement of the parties.

**FAILURE BY ANY MEMBER OF THE ASSOCIATION TO COMPLY WITH THE PREFILING REQUIREMENTS OF SECTION 5930 OF THE CIVIL CODE MAY RESULT IN THE LOSS OF YOUR RIGHTS TO SUE THE ASSOCIATION OR ANOTHER MEMBER OF THE ASSOCIATION REGARDING ENFORCEMENT OF THE GOVERNING DOCUMENTS.**



Should the association or an individual member wish to file a lawsuit for enforcement of the association's governing documents, the law requires the association or the individual to file a certificate with the court stating that ADR has been completed prior to the filing of the suit. Failure to file this certificate may be grounds for dismissing the lawsuit. There are limited exceptions to the filing of this required certification of the attempts made to seek resolution. If one or the other of the parties to the dispute refused ADR prior to the filing of the complaint, the certificate should so state. If immediate action is needed by seeking preliminary or temporary injunctive relief or the statute of limitations period for filing the suit will expire within 120 days of the lawsuit being filed, the certificate should state the necessity of immediacy. Without the certification, a court may dismiss the action.

Furthermore, in any lawsuit to enforce the governing documents, the prevailing party may be awarded attorney's fees and costs under Civil Code Section 5975. The court may consider any party's refusal to participate in ADR prior to the lawsuit being filed when it determines the amount of the award.

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