

## ALTERNATIVE DISPUTE RESOLUTION SUMMARY

Effective January 1, 2005, California *Civil Code* Sections 5925 through 5965 require community associations and their homeowners to offer to participate in some form of Alternative Dispute Resolution (“ADR”) prior to initiating certain types of lawsuits in superior court. ADR means mediation, arbitration, conciliation, or other nonjudicial procedure that involves a neutral party in the decision making process. ADR may either be binding or non-binding, as may be agreed to by the parties. This Summary of the ADR statutes is being distributed as required by California *Civil Code* Section 5965.

### I. When ADR Must be Offered Prior to Initiating Enforcement Action:

An association or an owner may not file certain lawsuits in superior court unless an effort has been made to submit the dispute to ADR as required by law. Generally, ADR must be offered before filing a civil action or proceeding that seeks:

- A. A judicial declaration of the rights and responsibilities of the parties, only; or
- B. A writ of mandate or a writ of prohibition, only; or
- C. Permanent injunctive relief only; or
- D. Declaratory relief, writ relief, or injunctive relief, combined with a claim for monetary damages of five thousand dollars or less

It is not necessary to offer ADR prior to filing any other type of superior court action, or prior to filing any type of small claims action. Except as otherwise provided by law, the ADR requirement does **not** apply to an assessment dispute.

### II. Compliance Procedures:

The ADR process is initiated by one party serving all other parties with a “Request for Resolution,” which shall include the following:

- A. A brief description of the dispute between the parties;
- B. A request for ADR;
- C. When directed to an owner, the request must be accompanied by a copy of the ADR statutes;
- D. A notice to all parties that they are required to respond within 30 days of receipt, or else the offer of ADR is deemed rejected; and

Service of the Request must be by personal delivery, first-class mail, express mail, facsimile transmission, or other means reasonably calculated to provide the intended recipient actual notice of the Request. If the Request is accepted, ADR must be completed within 90 days of the receipt of the acceptance, unless the parties sign a written agreement extending the completion date.

The cost of ADR is to be borne by the parties. Unless the parties agree, no oral or written evidence or statements made in an ADR proceeding, other than an arbitration proceeding, are admissible as evidence in a later lawsuit.

Each homeowner should consult with his or her own attorney regarding appropriate compliance with the ADR statutes.

III. Failure to Participate in Some Form of ADR Prior to Enforcement Action:

Should a party unreasonably refuse to participate in ADR before the lawsuit is filed, the court may, in its discretion, take this refusal into consideration in determining the amount of attorneys' fees and costs ultimately awarded at trial. In accordance with the disclosure requirement of California *Civil Code* Section 5965, please be advised that:

**“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 the member’s right to sue the association or another member of the association regarding enforcement of the governing documents or the applicable law”**

IV. Association’s Policy Regarding Internal Dispute Resolution:

In accordance with the California *Civil Code* Sections 5900 through 5920, a fair, reasonable, and expeditious procedure exists for resolving disputes between the Association and an owner involving their rights, duties, or liabilities under the Davis-Stirling Common Interest Development Act, the Nonprofit Mutual Benefit Corporation Law, or the Association’s governing documents. The procedure supplements, but does not replace, the ADR process summarized above. The statutory procedure is as follows:

- A. Either party may request the other, in writing, to meet and confer. While a homeowner may refuse a request to meet and confer, the Association may not refuse a homeowner’s request to meet and confer.
- B. The Board shall designate a member of the Board to meet and confer with the owner.
- C. The parties shall meet promptly at a mutually convenient time and place to explain their positions and confer in good faith in an effort to resolve the dispute.
- D. A resolution of the dispute shall be memorialized in writing and signed by the parties.
- E. An agreement reached using this procedure binds the parties and is judicially enforceable if it is not in conflict with law or the governing documents and the agreement is either consistent with the authority granted by the Board of Directors to the Board member who met with the owner, or if the agreement is ratified by the Board.
- F. An owner may not be charged a fee to participate in the process.