

Newport Hills Community Association Internal Dispute Resolution Policy

[Proposed]

In accordance with Civil Code section 5900 et seq., the Newport Hills Community Association (“Association”) has adopted the following Dispute Resolution Policy (“Policy”). A copy of this Policy shall be distributed annually to members as required by Civil Code sections 5310(a)(9), 5920, and 6965.

1. Internal Dispute Resolution

The following procedures are adopted to provide a fair, reasonable, and expeditious procedure for resolving disputes between the Association and members involving said parties’ rights, duties and/or liabilities under the Association’s governing documents, the Davis-Stirling Common Interest Development Act, or the nonprofit mutual benefit corporation law (collectively a “Dispute”). Either party to a Dispute may invoke Internal Dispute Resolution (“IDR”) by following the below procedures.

1.1 A party may request the other party to meet and confer in an effort to resolve the Dispute. The request shall be in writing and shall state the specific Dispute at issue.

1.2 A member may refuse a request to meet and confer. The Association may not refuse a member’s request to meet and confer.

1.3 In response to a request to meet and confer by a member, the Board will designate one or more directors (“Board Designee” or “Board Designees”) to represent the Association and meet and confer with the member. The Board shall have complete discretion in choosing the Board Designees. The Board shall also have the right to request, in its sole discretion, that any other individual or individuals (be it management, committee member(s), or legal counsel) assist the Association and attend the meet and confer session with the member.

1.4 A member participating in IDR may be assisted by an attorney or another person in explaining their position at the member’s cost. If a member desires to bring member’s attorney to the IDR, the member shall give at least ten (10) business days’ advance written notice to the Association, so that the Board may determine if Association legal counsel should attend. Failure of a member to provide timely notice of the attendance at the IDR by their legal counsel will require a postponement of the IDR. If a member appears at the IDR meeting with previously unannounced counsel, the Association reserves the right to postpone the IDR to a future date to allow Association counsel to attend. The meeting shall be rescheduled within a reasonable time thereafter.

1.5 Unless both parties agree in writing to extend the timeframe for completing IDR, the parties shall meet within forty-five (45) days of receipt of the request, at a mutually convenient time and place, explain their relative positions to one another, and confer in good faith in an effort to resolve the dispute. A member who fails to attend a previously confirmed IDR without rescheduling the same and without sufficient justification, may, at the discretion of the Board, be deemed to have waived their right to meet and confer with the Association concerning the Dispute.

1.6 The Board Designee(s) participating in the IDR on behalf of the Association shall not have authority to bind the Board or Association to any agreement or resolution unless such authority has been expressly granted by the Board in advance. Any proposed resolution reached at an IDR that exceeds the Board Designees' delegated authority must be ratified by the Board at a duly noticed meeting.

1.7 A resolution of the Dispute agreed to by the parties shall be memorialized in writing, following ratification by the Board if applicable, and signed by the parties, including a Board Designee or other director on behalf of the Association. A written agreement reached as a result of IDR binds the parties and is judicially enforceable if it is signed by both parties and if both of the following conditions are met:

- a. The agreement is not in conflict with law or the Association's governing documents.
- b. The agreement is either (i) within the authority granted to the Board Designees in advance or (ii) ratified by the Board at a duly noticed meeting.

1.8 A member may not be charged a fee to participate in the IDR process.

1.9 If an IDR does not result in a resolution of the Dispute, the Board may, but is not required to, memorialize in writing to the members that an IDR occurred with respect to the subject Dispute. An owner is not entitled to more than one (1) IDR with respect to any Dispute. Any additional IDR meetings concerning the same Dispute are at the sole discretion of the Board.

1.10 A copy of this Policy shall be included in the Annual Policy Statement distributed to members annually pursuant to Civil Code section 5310.

2. Alternative Dispute Resolution

Civil Code section 5925 et seq. (the "Statute") requires that the Association and owners endeavor to submit certain Disputes to Alternative Dispute Resolution ("ADR") prior to initiating a lawsuit. This Policy 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 and/or seek independent legal counsel.

2.1 Parties Bound by the Statute: The parties required to comply with the ADR Statute are the Association and any owners of record.

2.2 Disputes Subject to the Statute: Civil Code section 5930 provides that the Association or an owner 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 proceeding, other than a cross-complaint, for any of the following purposes: (i) enforcement of the Davis-Stirling Common Interest Development Act (Civil Code section 4000 et seq.); (ii) enforcement of the California Nonprofit Mutual Benefit Corporation law (Corporations Code section 7110 et seq.); or (iii) enforcement of the Governing Documents.

2.3 Disputes Not Subject to 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 the jurisdictional limits of the Small Claims Courts. The following types of disputes are specifically excluded from the Statute: (i) a Small Claims Court action; and (ii) an assessment dispute, except as otherwise provided by law.

2.4 Procedure for Invoking ADR: The party wishing to invoke the ADR process must serve on the other party a written request for ADR including the following information and language: (i) a brief description of the dispute; (ii) a request that the matter be submitted to ADR, specifying the type of ADR (e.g., arbitration) requested; (iii) notice that the party receiving the request for ADR (“Responding Party”) is required to respond thereto within thirty (30) days or the request will be deemed rejected; and (iv) if the Responding Party is an Owner, a copy of Civil Code section 5925 et seq.

2.5 Service of Request for ADR: A Request for ADR may be served by personal delivery, first-class mail, express mail, facsimile transmission, or other means reasonably calculated to provide the Responding Party with actual notice of the request.

2.6 Responding Party’s Obligation: Upon receipt of a request for ADR, the Responding Party, whether the Association or an Owner, has thirty (30) days from receipt in which to either accept or reject the request. If no such response is received, the request is deemed rejected.

2.7 Timeline for Completion of ADR: If the request for ADR is accepted, the parties shall complete the ADR within ninety (90) days of receipt of the acceptance, unless this period is extended by a written stipulation signed by both parties.

2.8 Cost of ADR: The cost of ADR shall be borne equally by the parties, subject to reallocation by the arbitrator if arbitration is sought or by a court in awarding prevailing party attorney’s fees in subsequent litigation.

2.9 Tolling of Statute of Limitations: If a request for ADR is served before the end of the applicable statute of limitations, the limitation is tolled for certain periods as specified in Civil Code section 5945.

2.10 Certificate: In the event that a lawsuit is eventually commenced, the party filing the lawsuit must file with the initial pleading a certificate stating that one or more of the following conditions is satisfied: (i) ADR has been completed; (ii) one of the parties to the dispute did not accept the terms of the request for ADR; or (iii) preliminary and/or temporary injunctive relief is necessary.

2.11 Consequences for Failure to Comply: The failure to file the aforesaid 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, 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 legal counsel in the event that you have legal questions. Failure of a member of the Association to comply with the ADR statute may result in the loss of certain rights to sue the Association or another member (see below disclosure).

2.12 Mandatory Disclosure (Civil Code section 5965):

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 of the applicable law.

[END OF DOCUMENT]