
COUNTRY PARK VILLAS HOMEOWNERS ASSOCIATION

TO: All Country Park Villas Homeowners
FROM: Community Manager
REF: Alternative and Internal Dispute Resolution Procedures

Dear Association Member:

For approximately the last nine (9) years, California Community Associations and their homeowners have been required to participate in certain Alternative Dispute Resolution ("ADR") procedures prior to initiating certain types of litigation between them. Beginning on January 1, 2005, newly-enacted Civil Code Sections 1363.810-850 require that, in addition to ADR, Associations also offer an Internal Dispute Resolution ("IDR") procedure for most disputes that may arise between the Association and a homeowner.

The following is an overview of the now statutorily-required ADR and IDR procedures/requirements. Please be advised that the referenced Civil Code Sections may be subject to varying interpretations. As such, this summary represents the current interpretation of one industry law firm based upon currently available information. Each homeowner should consult with his/her own attorney regarding appropriate compliance with the requirements in the newly-enacted Civil Code Sections if/when any disputes arise.

I. INTERNAL DISPUTE RESOLUTION ("IDR") PROCEDURES

Civil Code Section 1363.810 requires that Community Associations provide a fair, reasonable, and expeditious procedure for resolving disputes between an Association and any homeowner involving the Member's rights, duties, or liabilities under the Davis-Stirling Act, the Nonprofit Mutual Benefit Corporation Law, or under the governing documents of the Common Interest Development or Association. Unless you are notified otherwise, the Association will continue to provide fair, reasonable and expeditious procedures for resolving disputes by adopting the IDR procedure set forth in California Civil Code Section 1363.840, which is summarized as follows:

- A. Either party to the dispute (either the Member or the Association), may deliver a written request to the other party seeking to meet and confer in an effort to resolve the dispute. A homeowner may refuse a request to meet and confer. The Association may not refuse a request to meet and confer.
- B. The Association's Board of Directors shall designate a member of the Board of Directors to meet and confer.
- C. 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.

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D. 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.

E. An agreement reached using these procedures will bind 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, and (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.

F. A Member of the Association may not be charged a fee to participate in this process.

II. ALTERNATIVE DISPUTE RESOLUTION ("ADR")

If the parties cannot resolve a dispute through the use of IDR procedures referenced above (or elect not to initiate those procedures), the parties, under many circumstances, are required to attempt to resolve the dispute via ADR. Pursuant to California Civil Code Section 1369.510, California Community Associations and their individual Members are required to participate in ADR prior to initiating certain types of lawsuits. In accordance with California Civil Code Section 1369.590, you are advised that The Failure of a Member of the Association to comply with the Alternative Dispute Resolution 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.

A. WHAT IS ADR?

"Alternative Dispute Resolution" or "ADR" means mediation, arbitration, conciliation, or other non-judicial procedure that involves a neutral party in the decision-making process. The form of ADR is established by/through the voluntary consent of the parties.

B. SCOPE OF ADR REQUIREMENTS

The ADR provisions of Civil Code Section 1369.510-1369.590 apply only to enforcement actions filed by either homeowners or the Community Association against the other which (1) seek the enforcement of the Davis-Stirling Act, The Association's governing documents, or enforcement of the Nonprofit Mutual Benefit Corporation Law (Part 3 (commencing with Section 7110) of Division 2 of Title 1 of the Corporations Code), and (2) seek only the declaratory, injunctive, or writ relief, or for that relief in conjunction with a claim for monetary damages not in excess of Five Thousand Dollars (\$5,000.00). It does not apply to a small claims action, and except as otherwise provided by law, does not apply to assessment disputes.

C. ADR COMPLIANCE PROCEDURES:

1. The Request for Resolution.

An Association or an owner or a Member of a Common Interest Development may not file an enforcement action in the Superior Court unless the parties have endeavored to submit their dispute to ADR. Any party to a dispute may initiate the process by serving a Request for Resolution on all other parties to the dispute. The Request for Resolution shall include all of the following:

- a) A brief description of the dispute between the parties;
- b) A request for ADR;
- c) A notice that the party receiving the Request for Resolution is required to respond within thirty (30) days of receipt or the request will be deemed rejected; and;
- d) If the party on whom the request is served is the owner of a separate interest, a copy of the applicable Civil Code sections.

2. Service of the Request for Resolution.

The Request for Resolution must be served 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.

3. Response to a Request for Resolution.

A party served with a Request for Resolution has thirty (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. If the party served accepts the request, the parties are required to complete the ADR within ninety (90) days after the party initiating the request receives the acceptance, unless this period is extended by written stipulation signed by both parties. The costs of the ADR are shared by the parties.

4. Tolling.

If a Request for Resolution is served before the end of the applicable time limitation for commencing an enforcement action, the time limitation to file the enforcement action is tolled during (a) the period provided for the response to the Request for Resolution (thirty (30) days after service), and (b) if the Request for Resolution is accepted during the period provided for completion of ADR (ninety (90) days), including any extension of time agreed to by the parties.

5. Requirements for Filing a Lawsuit.

At the time of commencement of an enforcement action (lawsuit), the party commencing the action must file, with the initial pleading, a certificate stating that one or more of the following conditions is satisfied: a) ADR has been completed in compliance with the article, b) One of the other parties to the dispute did not accept the terms offered for ADR, or c) preliminary or temporary injunctive relief is necessary. Failure to file a certificate is grounds for a demurrer or a motion to strike unless the Court finds that dismissal of the action for failure to comply with this article would result in substantial prejudice to one of the parties.

D. RAMIFICATIONS OF A REFUSAL TO PARTICIPATE IN ADR:

If a party refuses to participate in ADR before the lawsuit is filed, the Court may, pursuant to Civil Code Section 1369.580, take that refusal into consideration in determining the amount of attorney's fees and costs which may ultimately be awarded to the prevailing party at the conclusion of any subsequent lawsuit.