

Dispute Resolution

The California Civil Code requires Homeowners Associations to provide processes for resolving disputes between a Member and the Association.

These processes include Internal Dispute Resolution (IDR) and Alternative Dispute Resolution (ADR).

"Appealing" a Penalty. There is no specific appeals procedure described in the Davis-Stirling Act for penalties imposed by an Association against a Member for violation of the Policies, Rules & Regulations. However, the IDR procedures could be used to appeal a decision since a meet and confer is mandatory if requested by a Member.

INTERNAL DISPUTE RESOLUTION PROCEDURE

In compliance with Civil Code §5910 the Association has adopted the following IDR procedure:

1. Either party may request the other party to meet and confer in an effort to resolve the dispute. The request shall be in writing. A Member of the Association shall not be charged a fee to participate in the process.
2. If the procedure is invoked by the Association, the Member may elect not to participate in the procedure. If the procedure is invoked by the Member, the Association shall participate in the procedure. If the Member participates but the dispute is resolved other than by agreement of the Member, the Member shall have a right of appeal to the Board.
3. The Board shall designate a director to meet and confer.
4. The parties shall meet promptly (within 30 days of the request) 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 may be assisted by an attorney or another person in explaining their positions at their own cost. A party intending to bring an attorney to the session shall give the other party 10-days advance notice.
5. A resolution of the dispute agreed to by the parties shall be memorialized in writing and signed by both parties, including the Board designee on behalf of the Association.
6. The agreement reached binds both parties and is judicially enforceable provided:
 - a) the agreement is not in conflict with the law or the governing documents and
 - b) the agreement either is consistent with the authority granted by the Board to its designee or the agreement is ratified by the Board.

ALTERNATIVE DISPUTE RESOLUTION PROCEDURE

Civil Code §5925 defines "Alternative dispute resolution" as mediation, arbitration, conciliation, or other nonjudicial procedure that involves a neutral party in the decision-making process. The form of alternative dispute resolution chosen may be binding or nonbinding, with the voluntary consent of the parties. The costs of the ADR shall be split evenly between the parties (§5940).

Civil Code §5930 stipulates 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 alternative dispute resolution pursuant to this article.

Per Civil Code §5935, Any party to a dispute may initiate the process required by §5930 by serving on all other parties to the dispute a Request for Resolution. The Request for Resolution shall include all of the following:

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 owner of a separate interest, the request must include a copy of Civil Code §5935.
5. 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.
6. 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.

Civil Code §5940 specifies that if the party on whom a Request for Resolution is served accepts the request, the parties shall complete the alternative dispute resolution within 90 days after the party initiating the request receives the acceptance, unless this period is extended by written stipulation signed by both parties.

If, after the ADR is completed, either party wishes to commence an enforcement action, Civil Code §5950 provides that the party commencing the action shall file with the initial pleading a certificate stating that one or more of the following conditions is satisfied:

1. Alternative dispute resolution has been completed in compliance with this article.
2. One of the other parties to the dispute did not accept the terms offered for alternative dispute resolution.
3. Preliminary or temporary injunctive relief is necessary.

Failure to file the above referenced 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.

Failure of a Member of the Association to comply with the alternative dispute resolution requirements of §5930 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.