



## **SUMMARY REQUIRED BY CIVIL CODE SECTION 5965**

### **ALTERNATIVE DISPUTE RESOLUTION-**

Pursuant to the requirements of California Civil Code ("Civil Code") the Association hereby provides you with notice and a summary of the following Alternative Dispute Resolution ("ADR") procedures.

### **ALTERNATIVE DISPUTE RESOLUTION:**

Under certain circumstances, all California community associations and their individual members are to offer to participate in some form of Alternative Dispute Resolution ("ADR") prior to initiating certain types of lawsuits pursuant to Civil Code Section 5930.

Please be advised that Civil Code Sections which apply to IDR and ADR could be subject to different interpretations as the statutory language has not yet been interpreted by any court. Each homeowner should consult with his/her own attorney regarding appropriate compliance with the statute.

#### **I. SCOPE OF STATUTE:**

Civil Code Section 5925 (a) defines "Alternative Dispute Resolution" as mediation, arbitration, conciliation, or other no judicial procedure that involves a neutral party in the decision making process. The form of ADR chosen may be binding or non-binding with the voluntary consent of the parties. Civil Code Section 5925 (b) defines "Enforcement Action" as a civil action or proceeding, other than a cross-complaint, filed, by either individual homeowners or community association, for any of the following purposes:

A. Enforcement of the Davis-Stirling Common Interest Development Act, Civil Code Section 4000 et seq.

B. Enforcement of the California Nonprofit Mutual Benefit Corporation Law (Part 3 (commencing with Section 7110) of Division 2 of Title 1 of the Corporations Code)

C. Enforcement of the governing documents of the common interest development

According to Civil Code Section 5930 (a), the Association or an owner or member of the Association may not file an Enforcement Action in the superior court unless the parties have endeavored to submit their dispute to ADR pursuant to Civil Code Section 1369.510, et seq.

According to Civil Code Section 5930 (b), (c) and (d), Civil Code Section 5925 only applies to an Enforcement Action that is solely for declaratory relief, injunctive relief, or writ relief, or for that relief in conjunction with a claim for monetary damages not in excess of five thousand (\$5,000). This section does not apply to a small claims action and, except as otherwise provided by law, this section 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 all of the following:

- A. A brief description of the dispute between the parties.
- B. A request for alternative dispute resolution.
- C. 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.
- D. If the party on whom the request is served is the owner of a separate interest, a copy of Civil Code Sections 5925 – 5965 must be provided along with service.

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.

The party on whom a Request of Resolution is served has 30 days following service to accept or reject the Request. If the party does not accept the Request within that period, the Request is deemed rejected by that party. If the party on whom a Request for Resolution is served accepts the Request, the parties shall complete the ADR within 90 days after the party initiating the Request receives the acceptance, unless this time period is extended by written stipulation signed by both parties. The costs of the Alternative Dispute Resolution shall be borne by the parties.

Statements, negotiations, and documents made or created at, or in connection with, ADR (except for arbitration) are confidential.

According to Civil Code Section 5945, a Request for Resolution is served before the end of the applicable time limitation for commencing an Enforcement Action, the time limitation is tolled during the following periods:

- A. The period provided in. Civil Code Section 5935 for response to a Request for Resolution.
- B. If the Request for Resolution is accepted, the period provided by Civil Code Section 5940 for completion of ADR, including any extension of time stipulated to by the parties pursuant to Civil Code Section 5940.

Pursuant to Civil Code Section 5950 (a), at the time of commencement of an Enforcement Action, the party commencing the action shall file with the initial pleading a certificate stating that one or more of the more following conditions is satisfied:

- A. ADR has been completed in compliance with this article.
- B. One of the other parties to the dispute did not accept the terms offered for ADR.

C. Preliminary or temporary injunctive relief is necessary.

Failure to file a certificate pursuant to Civil Code Section 5950 (a) 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.

Civil Code Section 5955 (a) provides that after an Enforcement Action is commenced, on written stipulation of the parties, the matter may be referred to ADR. The referred action is stayed. During the stay, the action is not subject to the rules implementing subdivision (c) of Section 68603 of the Government Code.

M. FAILURE TO PARTICIPATE IN SOME FORM OF ADR:

In an Enforcement Action, in which fees and costs may be awarded pursuant to Civil Code Section 5975 (c), the court, in determining the amount of an award of attorneys' fees and costs, may consider whether a party's refusal to participate in ADR before commencement of the action was reasonable.

In accordance with the provisions of the provisions of the Civil Code Section 5965, the Board of Directors of the Association hereby advises you of the following:

Failure by a member of the Association to comply with the alternative dispute resolution requirements of the Civil Code Section 5930 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.

IV. NO EFFECT ON VOLUNTARY PARTICIPATION IN ADR:

The parties may still agree, in writing, to refer any dispute involving enforcement of the Association's Governing Documents, California Corporations Code Section 7110, et seq., or the Davis-Sterling Common Interest Development Act, Civil Code Section 4000, et seq. to some form of IDR/ADR, even if those disputes may be technically outside of the IDR/ADR Statutes.

Please be advised that the Sections that apply to IDR and ADR could be subject to different interpretations, as the statutory language has not yet been interpreted by any court. Each homeowner should consult with his/her own attorney regarding appropriate compliance with the statutes: