

To: All Association Members
From: Board of Directors
Subject: Civil Code, Section 1354/Enforcement of Governing Documents

The section, as amended, provides that before either the Association or a member of the Association can file a lawsuit for Declaratory Relief or Injunctive Relief, either exclusively or in conjunction with a claim for Monetary Damages not to exceed \$5,000 (other than for Association assessments), the parties shall endeavor to submit the matter to Alternative Dispute Resolution prior to filing the lawsuit.

Alternative Dispute Resolution is either submitting the claim to mediation or arbitration. In Mediation, a mediator tries to resolve the differences between the parties and tries to get them to agree to compromise. Arbitration is a process whereby an arbitrator, usually a retired Judge or a lawyer or somebody with a special expertise in a particular field, listens to both sides of the case and makes a decision in the same manner as if a Judge would in court. Mediation and arbitration are non-binding under this section, however, the parties may agree to make it binding.

To submit a dispute to Alternative Dispute Resolution, the claimant must serve the other party with a "Request for Resolution" which briefly describes the dispute, requests that the dispute be submitted to Alternative Dispute Resolution, and notifies the other party that they must respond within thirty (30) days of receipt of the Request for Resolution, or it will be deemed rejected. If the other party accepts the Request for Resolution, the parties may mutually decide which form of Alternative Dispute Resolution (mediation or arbitration) they wish to submit the dispute to and whether it will be binding or non-binding. If accepted, the Alternative Dispute Resolution must be completed within ninety (90) days of receipt of acceptance of the Request for Resolution, unless extended by the parties. The parties share the costs of Alternative Dispute Resolution.

Anything said in the course of Alternative Dispute Resolution, or any documents prepared or admissions made in the course of the Alternative Dispute Resolution, are inadmissible in any civil action in which testimony can be compelled unless consented to by both parties.

This section requires that at the time a lawsuit is filed, a certificate must also be filed certifying that Alternative Dispute Resolution has been completed or one of the following exceptions applies:

1. The statute of limitations for bringing the civil action would run within 120 days (thus barring the civil action);

2. The other party who received the Request for Resolution refused to submit the dispute to Alternative Dispute Resolution prior to the filing of the complaint.
3. The court finds that dismissal of the civil action for failure to file the certificate would result in substantial prejudice to one of the parties; or
4. The court finds that Preliminary or Temporary Injunctive Relief is necessary.

Failure to file the required certificate, unless the exceptions apply, would make the lawsuit subject to dismissal.

This section would also allow a court to stay a pending action and refer it to Alternative Dispute Resolution upon stipulation of the parties.

Generally, in an action for Declaratory Relief or Injunctive Relief related to enforcement of governing documents of an Association, the prevailing party would be entitled to an award of attorney's fees and costs. However, if that prevailing party were offered an opportunity to submit the dispute to Alternative Dispute Resolution and refused to do so, the court could take this into consideration in making such an award of the attorney's fees and costs.

Failure by any member of the Association to comply with the pre-filing requirements of Section 1354 of the Civil Code may result in the loss of rights to sue the Association or another member of the Association regarding enforcement of the governing documents.

INTERNAL DISPUTE RESOLUTION PROCEDURES

The Association will continue to provide a fair, reasonable, and expeditious procedure for resolving disputes between the Association and any Member of the Association 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. The procedures for internal dispute resolution, as now set forth in *California Civil Code Section 1363.840*, are as follows:

1. Either party to the dispute may deliver a written request to the other party seeking to meet and confer in an effort to resolve the dispute. A member of the Association may refuse a request to meet and confer. The Association may not refuse a request to meet and confer.
2. The Association's Board of Directors shall designate a Member of the Board of Directors to meet and confer.
3. 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.
4. 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.
5. An agreement reached using these procedures will bind the parties and is judicially enforceable if both of the following conditions are satisfied:
 - (a) The agreement is not in conflict with law or the governing documents of the common interest development or Association.
 - (b) 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.
6. A Member of the Association may not be charged a fee to participate in this process.