

SUMMARY OF INTERNAL DISPUTE RESOLUTION PROCESS

In accordance with Civil Code Section 1363.810, et seq., the following internal dispute resolution process is to be followed by the Association and owners in connection with disputes between the Association and an owner involving their rights, duties or liabilities under the Nonprofit Mutual Benefit Corporation Law (Part 3 (commencing with Section 7110) of Division 2 of Title 1 of the Corporations Code) or under the Association's governing documents.

Either party to a dispute may invoke the following procedure:

1. The party may request the other party to meet and confer in an effort to resolve the dispute. The request shall be in writing.
2. An owner may refuse a request to meet and confer. The Association may not refuse a request to meet and confer.
3. The Association's Board of Directors shall designate a member of the Board to meet and confer.
4. 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.
5. 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.
6. The agreement reached binds the parties and is judicially enforceable if both of the following conditions are satisfied:
 - A) The agreement is not in conflict with the law or the governing documents of the common interest development or association; and
 - 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.
7. A member of the association may not be charged a fee to participate in the process.

**SUMMARY OF CALIFORNIA CIVIL CODE §1369.5
RELATING TO ENFORCEMENT OF GOVERNING DOCUMENTS
THROUGH ALTERNATIVE DISPUTE RESOLUTION**

California Civil Code §1369.5 addresses your right to sue the association or another member of the association regarding the enforcement of the governing documents. The following is a summary of the provisions of Civil Code §1369.5.

Civil Code §1369.5 encourages parties to a dispute involving enforcement of an association's governing documents to submit the dispute to a form of alternative dispute resolution (ADR) such as mediation or arbitration prior to filing a lawsuit. The intent of the statute is to promote speedy and cost-effective resolution of such disputes, to better preserve community cohesiveness and to channel CC&R disputes away from our state's court system.

Under Civil Code §1369.5, the form of alternative dispute resolution may be binding or non-binding and the costs will be shared unless some other agreement is reached between the parties involved.

Any party to a dispute regarding enforcement of the governing documents may initiate the process of ADR by serving a Request for Resolution of another party to the dispute. A Request for Resolution must contain (1) a brief description of the nature of the dispute, (2) a request for ADR, and (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.

If the Request is accepted, the ADR must be completed within 90 days of receipt of the acceptance, unless otherwise agreed by the parties. Any Request for Resolution sent to the owner of a separate interest must include a copy of Civil Code §1369.5 in its entirety.

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.

Should the association or an individual member wish to file a lawsuit for enforcement of the association's governing documents, the law requires the association or the individual to file a certificate with the court stating that ADR has been completed prior to the filing of the suit. Failure to file this certificate can be grounds for dismissing the lawsuit. There are limited exceptions to the filing of this required certification of the attempts made to seek resolution. If one of the other parties to the dispute refused ADR prior to the filing of the complaint, the certificate should so state. If immediate action is needed by seeking a preliminary or temporary injunctive relief or the statute of limitation period for filing the suit will expire within 120 days of the lawsuit being filed, the certificate should so state the necessity of immediacy. This certification would act to avoid having the court dismiss the action.

Furthermore, in any lawsuit to enforce the governing documents, the prevailing party may be awarded attorney's fees and costs under Civil Code §1369.5, and the statute also says that the court may consider any party's refusal to participate in ADR prior to the lawsuit being filed when it determines the amount of the award.

THE COMPLETE TEXT OF SEC 1369.5 IS REPRODUCED ON THE BACK OF THIS PAGE

CIVIL CODE SECTION 1369.510-1369.590

1369.510. As used in this article: (a) "Alternative dispute resolution" means mediation, arbitration, conciliation, or other nonjudicial procedure that involves a neutral party in the decision making process. The form of alternative dispute resolution chosen pursuant to this article may be binding or nonbinding, with the voluntary consent of the parties. (b) "Enforcement action" means a civil action or proceeding, other than a cross-complaint, for any of the following purposes: (1) Enforcement of this title. (2) Enforcement of the Nonprofit Mutual Benefit Corporation Law (Part 3 (commencing with Section 7110) of Division 2 of Title 1 of the Corporations Code). (3) Enforcement of the governing documents of a common interest development.

1369.520. (a) 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. (b) This section 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 five thousand dollars (\$5,000). (c) This section does not apply to a small claims action. (d) Except as otherwise provided by law, this section does not apply to an assessment dispute.

1369.530. (a) Any party to a dispute may initiate the process required by Section 1369.520 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, a copy of this article. (b) 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. (c) 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.

1369.540. (a) 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. (b) Chapter 2 (commencing with Section 1115) of Division 9 of the Evidence Code applies to any form of alternative dispute resolution initiated by a Request for Resolution under this article, other than arbitration. (c) The costs of the alternative dispute resolution shall be borne by the parties.

1369.550. If 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 Section 1369.530 for response to a Request for Resolution. (b) If the Request for Resolution is accepted, the period provided by Section 1369.540 for completion of alternative dispute resolution, including any extension of time stipulated to by the parties pursuant to Section 1369.540.

1369.560. (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 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. (b) Failure to file a certificate pursuant to subdivision (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.

1369.570. (a) After an enforcement action is commenced, on written stipulation of the parties, the matter may be referred to alternative dispute resolution. 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. (b) The costs of the alternative dispute resolution shall be borne by the parties.

1369.580. In an enforcement action in which fees and costs may be awarded pursuant to subdivision © of Section 1354, the court, in determining the amount of the award, may consider whether a party's refusal to participate in alternative dispute resolution before commencement of the action was reasonable.

1369.590. (a) An association shall annually provide its members a summary of the provisions of this article that specifically references this article. The summary shall include the following language:

"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."

(b) The summary shall be provided either at the time the pro forma budget required by Section 1365 is distributed or in the manner prescribed in Section 5016 of the Corporations Code. The summary shall include a description of the association's internal dispute resolution process, as required by Section 1363.850.