

PROMONTORY

ALTERNATIVE DISPUTE RESOLUTION

SUMMARY OF CALIFORNIA CIVIL CODE §1354(b) RELATING TO ENFORCEMENT OF GOVERNING DOCUMENTS THROUGH ALTERNATIVE DISPUTE RESOLUTION

PLEASE TAKE NOTICE: California Civil Code §1354 addresses your rights 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 §1354, as amended effective January 1 1994:

In general, Civil Code §1354 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 §1354, the form of alternative dispute resolution may be binding or non-binding and the costs will be borne as agreed to by 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 on 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 §1354 in its entirety.

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 YOUR RIGHTS TO SUE THE ASSOCIATION OR ANOTHER MEMBER OF THE ASSOCIATION REGARDING ENFORCEMENT OF THE GOVERNING DOCUMENTS.

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 certificate when 1) one of the other parties to the dispute refused ADR prior to the filing of the complaint; 2) preliminary or temporary injunctive relief is necessary; or 3) the statute of limitation period for filing the suit will expire within 120 days of the lawsuit being filed. Each of these exceptions however must also be certified in writing to avoid the court's dismissing the action.

Furthermore, in any lawsuit to enforce the governing documents, while the prevailing party may be awarded attorney's fees and costs, under Civil Code §1354 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.