

ALTERNATIVE DISPUTE RESOLUTION

Summary of Civil Code 5925-5965

Sections 5925 to 5965 of the Civil Code require that before owners and associations file lawsuits against each other for declaratory relief or injunctive relief in connection with a claim for money damages under \$5,000 or for enforcing the associations governing documents, the filing party shall endeavor to submit the dispute to alternative dispute resolution (ADR). Forms of ADR include mediation, negotiation, and binding or nonbinding arbitration. This provision does not apply to the filing of cross-complaints.

The ADR process is initiated by one party serving a request for resolution upon the other parties to the dispute. The request must include (i) a brief description of the dispute, (ii) a request for ADR, (iii) a notice that a response must be received within thirty (30) days or it will be deemed rejected, and (iv) a copy of Civil Code Sections 5925 to 5965.

If the individual receiving the request agrees to ADR, the process must be completed within ninety (90) days unless otherwise extended by agreement. The cost of ADR is to be paid by the participating parties. If a civil suit is filed, the filing party must submit to the court a certificate of compliance indicating the party has complied with the requirements of Sections 5925 to 5965. Failing to do so would be grounds for challenging the lawsuit.

Although the prevailing party is entitled to reasonable attorneys' fees and costs, the court may consider a party's refusal to participate in ADR when making the award.

A description of the Associations internal dispute resolution process, as required by Civil Code Section 5920, is attached.

NOTE: Failure by any member of the association to comply with the alternative dispute resolution requirements of Civil Code 5930 may result in the loss of your rights to sue the association or another member of the association regarding enforcement of the governing documents or the applicable law.

INTERNAL DISPUTE RESOLUTION

The association must provide a fair, reasonable and expeditious procedure for resolving disputes between the association and its members without charging a fee to the member for participating in the process. Civil Code § 5910.

Default Procedure. If an association does not establish its own procedures, then the following procedures automatically apply (Civil Code §5915):

1. Either the association or the member may request that the other side meet and confer in an effort to resolve the dispute. The association may not refuse such a request, and the member may not be charged a fee to participate in the process.
2. The association must designate a board member to attend the meet and confer session.
3. The meeting must occur promptly at a mutually convenient time and place. At the meeting, the parties must explain their positions to each other and must confer in good faith in an effort to resolve the dispute.
4. If the parties agree on a resolution of the dispute, the agreement must be put in writing and signed by the parties. The agreement is binding and can be enforced by the courts if: a) it is not in conflict with the law or the governing documents, and b) the associations representative had the authority to enter into the settlement or the settlement is ratified by the board.

Notice. The association must notify its members concerning both ADR and IDR dispute resolution procedures. Civil Code §5920