



Community of Harbor Bay Isle
Owners' Association, Inc.
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Notice of Proposed Rule Change
and 28 Day Review

November 3, 2023

Dispute Resolution Policies

Enclosed is the proposed Dispute Resolution Policies updated to replace the former Internal Dispute Resolution (IDR) and Alternative Dispute Resolution (ADR) Policies for the Community of Harbor Bay Isle Owners' Association (CHBIOA).

Civil Code § 4360 (a) (January 1, 2022) The Notice and Approval of Rule Change by Board requires that when a change of a rule is proposed, it must be sent out to the Community with a summary description and the proposed text for a 28 day comment period through "general delivery" as defined in **Civil Code § 4045 (January 1, 2019) Providing General Delivery or Notice**.

The change to Dispute Resolution Policies is being updated from the two separate 2009 versions of IDR Policies and ADR Policies, and has been combined into a single document which is expanded to encompass all current laws regarding disputes between an HOA and an Owner within the Community and Homeowner Associations therein. The text for the update is enclosed for your review and comment. You still receive the old versions with your budget documents as this update will not have received a final vote prior to distribution of the budget.

The CHBIOA Board of Directors has voted to send the updated Dispute Resolution Policies for Community review, and will consider all comments prior to voting on the rule change at the CHBIOA Board Meeting, December 6, 2023 at 6:45 pm, in the Poppy Room located at 3195 Mecartney Road, Alameda, CA 94502.

Comments will be accepted through 5pm on December 1, 2023. Comments may be delivered to the CHBIOA Community Office, 3195 Mecartney Road, Alameda, CA 94502 or sent via email to ExecutiveDirector@harborbay.org. The CHBIOA Board will review any comments received by the deadline at their board meeting prior to the vote, as indicated above.

Enclosed is the proposed Dispute Resolution Policies document.



COMMUNITY OF HARBOR BAY ISLE OWNERS ASSOCIATION
DISPUTE RESOLUTION POLICIES

Adopted on _____, 2023

The enclosed Dispute Resolution Policies apply, respectively, to the Community of Harbor Bay Isle Owners Association (“Association”) and its policies for informal meetings pursuant to Civil Code §5900, et. seq. (“IDR Policy”), and alternative dispute resolution proceedings pursuant to Civil Code §5925, et. seq. (“ADR Policy”).

A. Internal Dispute Resolution “IDR” Policy – In a dispute between the Association and an Owner involving their rights, duties or liabilities under the Davis-Stirling Act, Corporations Code or the Association’s governing documents, the Association or any Owner can elect to use the following IDR procedure. Owners will not be charged a fee to participate in the process. Each party is responsible for their own costs and expenses associated with the IDR. The following is the Association’s IDR process:

1. The party may request the other party to meet and confer in an effort to resolve the dispute. The request must be in writing and specify all disputes the requesting party has with the other party at that time to be efficient and respectful of the parties time and efforts to resolve disputes that may arise (“IDR Request”). To the extent the requesting party wishes to propose resolutions to resolve their dispute(s), they are encouraged (but not required) to include such resolutions in their IDR Request.

2. An Owner may refuse an IDR request. The Association may not refuse an IDR Request.

3. The Board will designate at least one, and potentially more, directors to meet and confer with the owner requesting IDR. The Board may request legal counsel to attend the IDR, and if it elects to have its legal counsel attend the IDR, it will provide the Owner with prior notice of same. An Owner can bring legal counsel or one other advocate to attend the IDR in order to assist the Owner in stating their positions, at their own cost, and in accordance with the prior notice outlined in Section 5 below.

4. The parties must 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. The Association will endeavor to schedule an IDR within 30-days of the Association’s receipt of an IDR Request.

5. The parties may be assisted by an attorney or another person at their own cost when conferring. An Owner intending to bring an attorney or another person to an IDR must inform the Association at least ten (10) days prior to the meeting. If an Owner brings an attorney or other person without the Association’s prior knowledge, the IDR will be rescheduled to a later date so the Association can be properly represented at the meeting.

6. If the parties are able to resolve the dispute, the resolution agreed to by the parties must be memorialized in writing and signed by the parties, including the Board designee on behalf of the Association. Unless at least a majority of the Board is present at the meeting, a written agreement reached under this section binds the parties and is judicially enforceable if it is signed by both parties and both of the following conditions are satisfied: (1) The agreement is not in

conflict with law or the governing documents of the Association and (2) The agreement is either consistent with the authority granted by the Board to its designee(s) or the agreement is ratified by the Board. Unless and until the resolution established at the IDR is approved or ratified by the Board, the parties are hereby informed that such resolution is not a legally binding or judicially enforceable agreement. Typically, if the parties reach terms at the IDR, the Association will send a follow-up letter to the Owner to confirm their understanding of and agreement with the terms reached at the IDR so that they can be provided to the full Board for its review and response.

7. With respect to a nuisance claim by an Owner(s), in the event the Board does not find the issue arises to the level of a nuisance, the Board encourages the complaining party(ies) to try and resolve the dispute amongst themselves. In the event the parties are unable to resolve their dispute, they may request, in writing, the Board facilitate an IDR between the parties per the above process, in which case the Board will send a letter inviting the relevant parties to attend the IDR. If a party refuses to attend, the Association will communicate this to the parties and will conclude the matter.

B. Alternative Dispute Resolution “ADR” Policy – It is the Association’s strong policy and preference that prior to the initiation of any legal disputes, with the exception of small claims matters and as otherwise permitted by law, that the Association and owners agree to submit their dispute to an alternative dispute resolution proceeding held in accordance with Civil Code §5925, et seq. To this end, for cost and time efficiency, the Association’s strong preference is for a non-binding mediation held with a third party neutral that has prior experience in handling mediations involving homeowners association issues.

§5925. Definitions

As used in this article:

(a) “Alternative dispute resolution” means mediation, arbitration, conciliation, or other nonjudicial procedure that involves a neutral third 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 act.

(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.

§5930. Litigation Pre-Filing Requirements

(a) An association or a member 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 the jurisdictional limits stated in Sections 116.220 and 116.221 of the Code of Civil Procedure.

(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.

§5935. Initiating the Process; Request for Resolution

(a) Any party to a dispute may initiate the process required by Section 5930 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 member, 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.

§5940. Completing the Process; Costs

(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.

§5945. Statutes of Limitation

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 5935 for response to a Request for Resolution.

(b) If the Request for Resolution is accepted, the period provided by Section 5940 for completion of alternative dispute resolution, including any extension of time stipulated to by the parties pursuant to Section 5940.

§5950. Certificate; Commencement of Action

(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 are 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.

§5955. Post-Filing Reference

(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.

§5960. Refusal to Participate in Pre-Filing Alternative Dispute Resolution

In an enforcement action in which attorney's fees and costs may be awarded, 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.

§5965. Annual Disclosure

(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 5930 of the Civil Code may result in the loss of the member's 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 included in the annual policy statement prepared pursuant to Section 5310.