

SUMMARY REQUIRED BY CIVIL CODE SECTION 1363.850
-INTERNAL DISPUTE RESOLUTION-
AND
SUMMARY REQUIRED BY CIVIL CODE SECTION 1369.590 (a)
-ALTERNATIVE DISPUTE RESOLUTION-

Pursuant to the requirements of California *Civil Code* Section 1363.850, the Association hereby provides you with notice and a summary of the following Internal Dispute Resolution (“IDR”) and Alternative Dispute Resolution (“ADR”) procedures, as stated in California *Civil Code* Section 1363.840 as follows:

INTERNAL DISPUTE RESOLUTION:

Either party to a dispute within the scope of *Civil Code* Section 1363.810-1363.850 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. A member of the Association 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.

An agreement reached under those sections binds the parties and is judicially enforceable if both of the following conditions are satisfied:

1. The agreement is not in conflict with law or the governing documents of the Association.
2. 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.

A member of the Association may not be charged a fee to participate in the IDR process.

ALTERNATIVE DISPUTE RESOLUTION:

Under certain circumstances, all California community associations and their individual members are to offer to participate in some form of Alternative Dispute Resolution (“ADR”) prior to initiating certain types of lawsuits pursuant to California *Civil Code* Section 1363.590.

Please be advised that *Civil Code* Sections 1363.840 and 1363.590 could be subject to different interpretations as the statutory language has not yet been interpreted by any court. Each homeowner should consult with his/her own attorney regarding appropriate compliance with the statute.

I. **SCOPE OF STATUTE:**

Civil Code Section 1369.510 (a) defines “Alternative Dispute Resolution” as mediation, arbitration, conciliation, or other nonjudicial procedure that involves a neutral party in the decision making process. The form of ADR chosen may be binding or non-binding with the voluntary consent of the parties. *Civil Code* Section 1369.510 (b) defines “Enforcement Action” as a civil action or proceeding, other than a cross-complaint, filed by either individual homeowners or community associations, for any of the following purposes:

- A. Enforcement of the Davis-Stirling Common Interest Development Act, *Civil Code* Section 1350, *et seq.*
- B. Enforcement of the California Nonprofit Mutual Benefit Corporation Law (commencing with Section 7110 of the *Corporations Code.*)
- C. Enforcement of the governing documents of the common interest development.

The Association or an owner or member of the Association may not file an Enforcement Action in the superior court unless the parties have endeavored to submit their dispute to ADR pursuant to *Civil Code* Section 1369.510.

Civil Code Section 1369.510 only applies to an Enforcement Action that is solely for declaratory relief, injunctive relief, or writ relief, or for that relief in conjunction with a claim for monetary damages not in excess of five thousand dollars (\$5,000). This section does not apply to a small claims action and except as otherwise provided by law, this section does not apply to an assessment dispute.

II. **COMPLIANCE PROCEDURES:**

The ADR process is initiated by one party serving all other parties with a “Request for Resolution,” which shall include all of the following:

- A. A brief description of the dispute between the parties.
- B. A request for alternative dispute resolution.

- C. A notice that the party receiving the Request for Resolution is required to respond within 30 days of receipt of the request will be deemed rejected.
- D. If the party on whom the request is served is the owner of a separate interest, a copy of *Civil Code* Sections 1369.510 – 1369.590.

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.

The party on whom a Request for Resolution is served has 30 days following service to accept or reject the Request. If the party does not accept the Request within that period, the Request is deemed rejected by that party. If the party on whom a Request for Resolution is served, accepts the Request, the parties shall complete the ADR within 90 days after the party initiating the Request receives the acceptance, unless this time period is extended by written stipulation signed by both parties. The costs of the Alternative Dispute Resolution shall be borne by the parties.

Statements, negotiations, and documents made or created at, or in connection with, ADR (except for arbitration) are confidential.

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 *Civil Code* Section 1369.530 for response to a Request for Resolution.
- B. If the Request for Resolution is accepted, the period provided by *Civil Code* Section 1369.540 for completion of ADR, including any extension of time stipulated to by the parties pursuant to Section 1369.540.

Pursuant to *Civil Code* Section 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:

- A. ADR has been completed in compliance with this *Civil Code* Section 1369.510. *et seq.*
- B. One of the other parties to the dispute did not accept the terms offered for ADR.
- C. Preliminary or temporary injunctive relief is necessary.

Failure to file a certificate pursuant to *Civil Code* Section 1369.560 (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.

Civil Code Section 1369.570 (a) provides that after an Enforcement Action is commenced, on written stipulation of the parties, the matter may be referred to ADR. 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*.

III. FAILURE TO PARTICIPATE IN SOME FORM OF ADR:

In an Enforcement Action, in which fees and costs may be awarded pursuant to *Civil Code* Section 1354 (c), the court, in determining the amount of an award of attorneys fees and costs, may consider whether a party's refusal to participate in ADR before commencement of the action was reasonable.

In accordance with California *Civil Code* Section 1369.590, the Board of Directors of the Association hereby advises you of the following:

Failure by 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.

IV. NO EFFECT ON VOLUNTARY PARTICIPATION IN ADR:

The parties may still agree, in writing, to refer any dispute involving enforcement of the Association's Governing Documents, California *Corporations Code* Section 7110, *et seq.*, or the Davis-Stirling Common Interest Development Act, *Civil Code* Section 1350, *et seq.* to some form of IDR/ADR, even if those disputes may be technically outside of the IDR/ADR statutes.