

AVOCET

ASSOCIATION, INC.

C/o Association Management Group
Tel: (858) 622-8500 Fax: (760) 931-4188

2131 Las Palmas Drive, Suite A, Carlsbad, CA 92011-1524
Email: amg@sdamg.net

ALTERNATIVE DISPUTE RESOLUTION (ADR)

The California Legislature has established a public policy in this state which encourages the use of Alternative Dispute Resolution (ADR) to resolve conflicts which arise in condominiums, planned developments and other common interest developments.

The new law amends California Civil Code Sections 1369.510 et seq. and requires that certain types of disputes between homeowner associations and their members, or between association members, be submitted to ADR. ADR may take the form of mediation, arbitration, conciliation or other non-judicial procedure that involves a neutral party in the decision-making process. The new law prohibits the filing of a lawsuit seeking to enforce the association's governing documents unless the parties have endeavored to submit their dispute to ADR, unless the lawsuit claims monetary damages in excess of \$5,000.00. Cal. Civ. Code § 1369.520.

The law also requires each homeowners association to distribute a summary of California Civil Code Section 1369.510 et seq. to its members annually either at the time the annual budget is distributed or in the manner specified in Corporations Code Section 5016.

Rather than attempt to summarize the law, which may result in a misunderstanding of what the law states, the Association is providing a copy of Section 1369.510 et seq. in its entirety below. **PLEASE NOTE: FAILURE BY ANY MEMBER OF THE ASSOCIATION TO COMPLY WITH THE PRE-FILING REQUIREMENTS OF CALIFORNIA CIVIL CODE SECTION 1369.520 ET SEQ. MAY RESULT IN THE LOSS OF SUCH MEMBER'S RIGHTS TO SUE THE ASSOCIATION OR ANOTHER MEMBER OF THE ASSOCIATION REGARDING ENFORCEMENT OF THE GOVERNING DOCUMENTS.**

§ 1369.510. Definitions

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. Filing enforcement actions; application of section

- (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. Initiation of process; serving a Request for Resolution; personal delivery; acceptance or rejection of request

- (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. Timeline for completion of alternative dispute resolution

- (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. Tolling of statute of limitations

- 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. Certificates filed with initial pleading; grounds for demurrer or motion to strike

- (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. Referral of actions to alternative dispute resolution; stay of referral action

- (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 (b) of Section 68603 of the Government Code.
- (c) The costs of the alternative dispute resolution shall be borne by the parties.

1369.580. Award of fees and costs

In an enforcement action in which fees and costs may be awarded pursuant to subdivision (c) 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. Annual summary of provisions of article; contents of summary

- (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.

MEET AND CONFER PROCEDURE:

In addition to the statutory procedure set forth above, the Association has adopted an informal "meet and confer" procedure to resolve disputes between the Association and a member involving their rights, duties or liabilities under California Civil Code Section 1369.510 et seq., the Nonprofit Mutual Benefit Corporation Law (Division 2 of Title 1 of the Corporations Code (Part 3, commencing with Corporations Code Section 7110)) or under the Association's governing documents. That procedure is as follows:

Either the association or the member may request in writing that the other side meet and confer in an effort to resolve the dispute. A quorum of the Board of Directors will attend the meet and confer session. 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. Any resolution of the dispute agreed to by the parties shall be memorialized in writing and shall be signed by the homeowners and by a designated signer on behalf of the Association.