

**THE MEADOWS ASSOCIATION
SUMMARY OF DISPUTE RESOLUTION PROVISIONS
(IDR POLICY/ADR SUMMARY OF LAW)**

Approved by the Board of Directors on August 6, 2018

INTRODUCTION

California law provides two separate types of dispute resolution procedures to resolve disputes between Associations and their members. The first type of dispute resolution is referred to as "Informal Dispute Resolution" or IDR. The law governing IDR refers to it as "meet and confer" dispute resolution, and is found at Section 5900 et seq. of the Civil Code. The law is intended to provide a simple and efficient intra-association dispute resolution procedure at little or no cost to the parties.

The second type of dispute resolution process is more formal and involves a neutral third party. It is referred to as "Alternative Dispute Resolution," "ADR," or "neutral third party" ADR. The law governing ADR is found at Civil Code §5925 et seq. (copied below). A request of ADR is required as a prerequisite to many disputes that involve litigation or foreclosure against a member's separate interest by the Association.

For many disputes, both types of dispute resolution procedures are available. IDR (meet and confer) can often be employed as a first step. If the IDR process does not resolve the dispute, the more formal, neutral third party ADR process is available thereafter for many disputes that involve foreclosure or litigation. This notice is intended as a summary of both dispute resolution procedures that are available. If a member has any questions, they should obtain independent legal advice.

**I. INFORMAL DISPUTE RESOLUTION (MEET AND CONFER) POLICY
(Cal. Civil Code §5900 et seq.)**

Civil Code Section 5900 requires the Association to provide a fair, reasonable, and expeditious procedure for resolving disputes with members, at little or no cost. The Association's policy is that Informal Dispute Resolution must be completed promptly, and, unless extended by the agreement of the parties, not more than 30 days of the date an IDR request is made by any party. If IDR is not completed within 30 days, it shall be deemed complete, unless a written agreement is signed by all parties extending the time in which to complete the IDR process. Telephone calls between the parties are an acceptable method to engage in IDR, although if either party requests a personal meeting, that request must be honored, so long as IDR can be completed within the timelines required by this notice. If a member requests IDR but refuses to meet promptly without good cause, the Association may terminate the IDR prior to the 30-day time period. The Association's general policy is to not have attorneys present at the IDR meet and confer sessions, though the Association reserves the right to have its attorney attend with advance notice to the member. A party may not be assisted by an attorney or another person at the meet and confer between the Association representative and the member unless advance

written notice is provided to the other party at least three (3) days prior to the meeting that an attorney or other person will be in attendance; upon receipt of the notice, the other party may request to postpone the meeting to allow that party's attorney or other person to attend the meeting. The Association has not adopted any other specific IDR procedures, so the basic procedures set forth at Civil Code Section 5915 govern all other IDR procedures. The relevant provisions of Section 5915 are as follows:

1. Either party to a dispute involving the rights, duties or liabilities of a member or the Association regarding the Association's governing documents (CC&Rs, Bylaws, Rules, etc.), the Davis-Stirling Common Interest Development Act or other matters set forth in Civil Code § 5900(a), may invoke the following procedure:
 - (a) The party may request the other party to meet and confer in an effort to resolve the dispute. The request shall be in writing.
 - (b) A member of an association may refuse a request to meet and confer. The association may not refuse a request to meet and confer.
 - (c) The association's Board of Directors shall designate a member of the Board to meet and confer.
 - (d) 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. The parties may be assisted by an attorney or other person at their own cost when conferring.
 - (e) 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.
2. An agreement reached under this section binds the parties and is judicially enforceable if both of the following conditions are satisfied:
 - (a) The agreement is not in conflict with law or the governing documents of the common interest development or Association.
 - (b) 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.
3. A member of the Association may not be charged a fee to participate in the process.

II. ALTERNATIVE DISPUTE RESOLUTION (NEUTRAL THIRD PARTY) SUMMARY OF LAW (Cal. Civil Code §5925)

Civil Code Section 5925 et seq. requires members and their associations to pursue formal Alternative Dispute Resolution (ADR) with neutral third parties before involving the courts in most disputes that relate to enforcement of association governing documents (CC&R's, By-Laws,

Rules, etc.). The following is intended as a summary of the ADR requirements set forth in applicable law. It is not intended to supplement or modify the law. To the extent this summary conflicts with applicable law, the law shall control.

1. Associations and their members are required to pursue ADR prior to filing lawsuits in civil court, if the dispute involves (i) claims solely for declaratory, injunctive or writ relief seeking the enforcement of governing documents, enforcement of the Davis-Stirling Common Interest Development Act, or enforcement of the Nonprofit Mutual Benefit Corporation Law (Corporations Code §§ 7110 et seq.) (e.g., relief that compels or stops actions or declares rights); or (ii) claims for declaratory, injunctive or writ relief seeking the enforcement of governing documents, enforcement of the Davis-Stirling Common Interest Development Act, or enforcement of the Nonprofit Mutual Benefit Corporation Law (Corporations Code §§ 7110 et seq.) in conjunction with a claim for monetary damages not in excess of the jurisdictional limits of the small claims court (\$5,000 for claims by the corporations, such as the association, \$10,000 for claims by individuals).
2. Prior to initiating a foreclosure, the association shall offer and, if so requested by the member, participate in IDR or ADR. In a foreclosure, the decision to pursue dispute resolution or a particular type of dispute alternative dispute resolution shall be the choice of the member, except that binding arbitration shall not be available if the association intends to initiate a judicial foreclosure.
3. Disputes over enforcement of assessments that do not involve foreclosure against a member's separate interest by the association where, for example, the association takes a member to small claims or superior court to collect a delinquent assessment do not require ADR. However, for certain disputed charges or sums levied by the association, a member may submit a Request for Resolution to the association under Civil Code section 5658 and the association may accept or decline the request.
4. The costs of ADR are to be shared by the parties. (Civil Code section 5940(c).) The Association's general policy is that the costs should be shared equally but subject to recovery by the prevailing party if authorized by the governing documents and/or applicable law. Pursuant to Section 5975, in actions to enforce association governing documents, the prevailing party is generally entitled to recover its attorney's fees and costs. It is not the association's intent in participating in any ADR to modify the governing documents, Civil Code §5975 or other applicable law governing recovery of attorneys' fees or costs by the prevailing party. However, refusal to participate in ADR is one factor a court may consider in determining the amount of attorney's fees and costs to be awarded to the prevailing party (Civil Code § 5960).
5. The association's policy is that the type of ADR, the selection of the neutral party, the date of the ADR, the ADR procedures, and other reasonable and customary matters incident to an ADR proceeding should be agreed to by the parties in writing as part of and prior to the submission of the matter to ADR.

6. Available types of neutral third party ADR generally include non-binding mediation, non-binding arbitration, or binding arbitration. The parties must generally agree on the type of ADR used, except that if the association intends to initiate a foreclosure action against a member, binding arbitration may not be available, and a member can generally decide which other type of formal ADR is used.
7. A member must pursue ADR prior to the member filing a lawsuit in civil court raising the types of claims set forth in Section 1 above. Although a member can refuse to participate in ADR if the association requests ADR prior to the association filing a lawsuit in civil court raising the types of claims set forth in Section 1, there are adverse consequences for refusal to participate, such as consideration of such refusal in determining the amount of attorneys' fees and costs to award to the prevailing party.

NOTE: 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.

Civil Code section 5925 et seq. governing ADR reads as follows as of July 1, 2018:

ARTICLE 3. Alternative Dispute Resolution Prerequisite to Civil Action [5925 - 5965] (Article 3 added by Stats. 2012, Ch. 180, Sec. 2.)

5925.

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 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.

(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.

(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.

(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.

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.

(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.

(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.

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.

(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.

MEMBER REQUEST FOR DISPUTE RESOLUTION

TO: **The Meadows Association**

FROM: _____
Name of Party Requesting Resolution

Address

A dispute has arisen between the above parties concerning, (Describe in the following space. Attach additional sheets if more space is needed):

TYPE OF DISPUTE RESOLUTION PROCEDURE REQUESTED:

1. IDR - Informal Dispute Resolution (Meet and Confer), pursuant to Civil Code §5900 et seq.:
☐ I am requesting an informal meeting with the Board of Directors or their representative. Unless I indicate below, I do not plan to have an attorney or other person present at the meeting.

2. ADR - Neutral Third Party Alternative Dispute Resolution, pursuant to Civil Code Section 5925 et seq. The undersigned hereby requests the following type of formal ADR:

(Choose one):
☐ Non-Binding Mediation
☐ Non-Binding Arbitration
☐ Binding Arbitration

You are required to respond to this request within 30 days of receipt or it will be considered rejected. If the request above is for ADR, a lawsuit may be filed against you if you reject ADR or you do not respond within thirty (30) days.