

## SECURITY DISCLAIMER

We hope that our security systems provide some deterrence to crime. However, the association can never be crime-free. For example, it is possible for someone to enter the property under false pretenses to commit crimes, for residents to commit crimes against their own neighbors, for guests of residents to commit crimes, and for employees to commit crimes.

As a result, the association cannot guarantee your security. You should NOT rely on the association to protect you from loss or harm. You should provide for your own security by keeping your doors locked; refusing to open your door to strangers; asking workmen for identification; installing a security system; carrying insurance; etc.

## COURTESY CAMERA'S

In California, associations can lawfully install video surveillance cameras in the common areas so long as they are not viewing areas where people have a reasonable expectation of privacy, such as restrooms, locker rooms, or the interior of an owner's unit. ([Penal Code § 647\(j\).](#))

**Audio Surveillance.** The principles applied to visual surveillance do not carry over to audio surveillance. Individuals have an expectation of privacy when it comes to conversation--they can lower their voices or stop speaking when they see someone approaching. Parties to a confidential communication must give permission to be recorded. ([Penal Code § 632.](#)) The exception is if participants could reasonably expect to be overheard or recorded. ([Penal Code § 632\(c\).](#))

**Posting Signs.** There is no law requiring an association (or anyone who posts video surveillance cameras in public spaces) to post signs, give notice or to obtain prior consent to film areas where there is no reasonable expectation of privacy. However, posting signs informing homeowners and other persons that the area is under surveillance may help increase the cameras' deterrent effects and lower the likelihood of a claim that a person had a reasonable expectation of privacy.

## LIABILITY FOR SECURITY

Liability for security breaches depends on [foreseeability](#) and the circumstances. In [Titus v. Canyon Lake Property Owners Association](#) the court examined whether an association was liable for injuries sustained as a result of a fatal traffic accident in its gated community. A resident of Canyon Lake POA was killed when he was a passenger in a car driven by an intoxicated driver. The victim's daughter sued the association claiming it had a duty to protect her father from drunk drivers. She claimed the CC&Rs created an affirmative duty to provide a safe and secure environment in the community which obligated the association to stop the intoxicated driver from using the association's private streets. She argued that:

[The Association] owns, maintains, and operates the common areas and facilities, including streets, within the Community. Pursuant to its bylaws, [the Association] is "charged with 'doing whatever is necessary, conducive, incidental or advisable to accomplish and promote its object and purposes.'" Its "object" is to "promote the common interest and welfare of its members." Among its purposes is to "preserve, protect and police" the common facilities.

The court disagreed. It held that, in general, persons are not liable for the conduct of third parties without the existence of a "special relationship" that would create a duty. Some of the factors used to determine if a special relationship exists include the following:

Whether there is a "high degree of foreseeability," that an accident will occur.

Whether the association encouraged or had some involvement in the incident (in this case, the driver's intoxication).

Whether the association (i) intended or planned the harmful result; (ii) had actual or constructive knowledge of the harmful consequences of their behavior; (iii) acted in bad faith or with a reckless indifference to the results of their conduct; or (iv) engaged in inherently harmful acts.

The court found that the association did not make any promises upon which the victim relied, nor did it create the situation which led to the accident. The court concluded that the connection between the association and the victim was remote, and no special relationship existed sufficient to create liability.

## **Civil Code § 4040. Providing Notice or Delivery to Individuals.**

(a) (1) If a provision of this act requires an association to deliver a document by “individual delivery” or “individual notice,” the association shall deliver that document in accordance with the preferred delivery method specified by the member pursuant to [Section 4041](#).

(2) If the member has not provided a valid delivery method pursuant to [Section 4041](#), the association shall deliver the document by first-class mail, registered or certified mail, express mail, or overnight delivery by an express service carrier addressed to the recipient at the address last shown on the books of the association.

(b) Upon receipt of a request by a member identifying a secondary email or mailing address for delivery of notices, pursuant to [Section 5260](#), the association shall deliver an additional copy of both of the following to the secondary address identified in that request:

(1) The documents to be delivered to the member pursuant to Article 7 (commencing with Section 5300) of Chapter 6.

(2) The documents to be delivered to the member pursuant to Article 2 (commencing with Section 5650) of Chapter 8 and [Section 5710](#).

(c) For the purposes of this section, an unrecorded provision of the governing documents providing for a particular method of delivery does not constitute agreement by a member to that method of delivery.

(d) This section shall become operative on January 1, 2023.

## Civil Code § 4041. Member Contact Information.

(a) A member shall, on an annual basis, provide written notice to the association of all of the following:

(1) The member's preferred delivery method for receiving notices from the association, which shall include the option of receiving notices at one or both of the following:

(A) A mailing address.

(B) A valid email address.

(2) An alternate or secondary delivery method for receiving notices from the association, which shall include the option to receive notices at one or both of the following:

(A) A mailing address.

(B) A valid email address.

(3) The name, mailing address, and, if available, valid email address of the owner's legal representative, if any, including any person with power of attorney or other person who can be contacted in the event of the member's extended absence from the separate interest.

(4) Whether the separate interest is owner-occupied, is rented out, if the parcel is developed but vacant, or if the parcel is undeveloped land.

(b)

(1) The association shall solicit the annual notices described in subdivision (a) of each owner and, at least 30 days before making its own required disclosure under [Section 5300](#), shall enter the data into its books and records.

(2) The association shall include in the solicitation required by paragraph (1) both of the following:

(A) Notification that the member does not have to provide an email address to the association.

(B) A simple method for the member to inform the association in writing that the member wishes to change their preferred delivery method for receiving notices from the association.

(c) If a member fails to provide the notices set forth in subdivision (a), the last mailing address provided in writing by the member or, if none, the property address shall be deemed to be the address to which notices are to be delivered.

(d)

(1) To the extent that interests regulated in Chapter 2 (commencing with Section 11210) of Part 2 of Division 4 of the Business and Professions Code are part of a mixed-use project where those interests comprise a portion of a common interest development, the association, as defined in [Section 4080](#), shall be deemed compliant with this section if, at least once annually, it obtains from the time-share plan association a copy of the list described in subdivision (e) of Section 11273 of the Business and Professions Code, and enters the data into its books and records.

(2) Notwithstanding subdivision (e) of Section 11273 of the Business and Professions Code, the time-share plan association shall provide the list required by paragraph (1) to the association at least annually for this purpose.

(e) For the purposes of this section, a valid email address is one that, after a notice is sent, does not result in a bounce or other error notification indicating failure of the message. If the association delivers a notice to a member's email address and finds that the email address provided is no longer valid, the association shall resend the notice to a mailing or email address identified by the member pursuant to [Section 4040](#).

*(Amended by Stats. 2021, Ch. 640, Sec. 3. Effective January 1, 2022.)*

## Civil Code § 4045. Providing General Delivery or Notice.

(a) If a provision of this act requires “general delivery” or “general notice,” the document shall be provided by one or more of the following methods:

(1) Any method provided for delivery of an individual notice pursuant to [Section 4040](#).

(2) Inclusion in a billing statement, newsletter, or other document that is delivered by one of the methods provided in this section.

(3) Posting the printed document in a prominent location that is accessible to all members, if the location has been designated for the posting of general notices by the association in the annual policy statement, prepared pursuant to [Section 5310](#).

(4) If the association broadcasts television programming for the purpose of distributing information on association business to its members, by inclusion in the programming.

(5) If the association maintains an internet website for the purpose of distributing information on association business to its members, by posting the notice on the association's internet website in a prominent location that is accessible to all members if designated as a location for posting general notices in the annual policy statement prepared pursuant to [Section 5310](#).

(b) Notwithstanding subdivision (a), if a member requests to receive general notices by individual delivery, all general notices to that member, given under this section, shall be delivered pursuant to [Section 4040](#). The option provided in this subdivision shall be described in the annual policy statement prepared pursuant to [Section 5310](#).

*(Amended by Stats. 2021, Ch. 640, Sec. 4. Effective January 1, 2022.)*

# INTERNAL DISPUTE RESOLUTION (IDR)

## **Meet & confer.**

Associations must provide a "fair, [reasonable](#) and expeditious" procedure for resolving disputes between the association and its members without charging a fee to the member participating in the process. ([Civ. Code § 5910.](#)) The process is referred to as "Internal Dispute Resolution" (IDR) or "meet and confer."

**Pre-Litigation IDR.** An association may not file a civil action regarding a dispute in which the member has requested dispute resolution unless the association has complied with [Civil Code § 5910](#) by engaging in good faith in the internal dispute resolution procedures after a member invokes those procedures. ([Civ. Code § 5910.1.](#))

## **Notice.**

Associations must notify their members of both [ADR](#) and [IDR](#) dispute resolution procedures. In Wildwood HOA, a written request for IDR via mail, email, text, or IM is acceptable.

## **Default Procedure.**

If an association does not establish its own procedures, then the following procedures automatically apply ([Civ. Code § 5915\(b\)](#)):

- (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 an association may refuse a request to meet and confer. The association may not refuse a request to meet and confer.
- (3) The board shall designate a director 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. The parties may be [assisted by an attorney](#) or another person at their own cost when conferring.
- (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.

**Written Resolution.** Any agreement resolving the dispute must be in writing and signed by both parties. The agreement cannot conflict with the law or governing documents and within the authority of the board. ([Civ. Code § 5915\(c\).](#))

**"Appealing" a Penalty.** There is no specific appeals procedure described in the Davis-Stirling Act for penalties imposed by an association against a member for violation of the rules and regulations. However, the IDR procedures described above could be used to appeal a decision since a meet and confer is mandatory if requested by a member. When it comes to ADR (mediation and arbitration), the association has no obligation to accept a request for ADR. If, however, the member is planning to sue the association, the member may be obligated to [request ADR](#) before filing suit, at which point the association should accept the request for ADR.

## PRE-LITIGATION ADR

**Pre-Litigation IDR.** An association may not file a civil action regarding a dispute in which the member has requested dispute resolution unless the association has complied with [Civil Code § 5910](#) by engaging in good faith in the [internal dispute resolution](#) procedures after a member invokes those procedures. ([Civ. Code § 5910.1.](#))

**Pre-Litigation ADR.** Neither associations nor their members may file an "[enforcement action](#)" in [superior court](#) unless the parties have "endeavored" to submit their dispute to alternative dispute resolution pursuant to [Civil Code § 5930\(a\)](#). Parties are required to offer [alternative dispute resolution](#) (ADR) if the anticipated litigation is:

- is solely for [declaratory, injunctive relief](#), or writ relief;
- is solely for [declaratory, injunctive relief](#), or writ relief in conjunction with monetary damages not in excess of small claims limits (Code Civ. Proc. [§ 116.220](#) and [§ 116.221](#));
- prior to initiating foreclosure on an owner's interest. ([Civ. Code § 5705\(b\)](#).)

**When Not Required.** ADR is not required:

- If going to [small claims](#) court. ([Civ. Code § 5930\(c\)](#).)
- If preliminary or temporary injunctive relief is necessary. ([Civ. Code § 5950\(a\)\(3\)](#).)
- If filing suit for delinquent assessments, unless requested by a member related to [disputed assessments](#) or charges.

**Mediation Confidentiality Disclosure.** An attorney representing a person in a mediation or a mediation consultation must provide his or her client, as soon as reasonably possible before the client agrees to participate in the mediation or mediation consultation, with [a printed disclosure](#), containing the confidentiality restrictions related to mediation, and to obtain a printed acknowledgment signed by that client stating that he or she has read and understands the confidentiality restrictions.

**Refusal to Participate.** If a party unreasonably refuses to participate in alternative dispute resolution and the case proceeds to court, the court can take that into consideration when it comes to the award of [attorneys' fees](#).

Section 5950, subdivision (a), requires a party commencing an action to file a certificate of efforts to resolve the dispute with the initial pleading. The certificate must state that either: "(1) Alternative dispute resolution has been completed in compliance with" sections 5925 et seq.; "(2) One of the other parties to the dispute did not accept the terms offered for alternative dispute resolution"; or "(3) preliminary or temporary injunctive relief is necessary." (§ 5950.) In the first action, plaintiffs filed a complaint without a certificate. In the second action, plaintiffs filed a certificate that was deemed not to "comply with Civil Code section 5950." The court reasoned that "to dismiss the first action, and re-file it without making any substantive changes or any additional attempt to engage in ADR was [frivolous](#)." The court's determination that the action was [frivolous](#) depended upon the conclusion that plaintiffs did not comply with section 5950. ([Retzloff v. Moulton Parkway HOA](#).)

**Certificate of Compliance.** At the commencement of litigation, the party filing the action must include certificate stating that one or more of the following conditions is satisfied ([Civ. Code § 5950\(a\)\(3\)](#)):

- ADR has been completed,
- Other party did not accept ADR, or
- Preliminary or temporary injunctive relief is necessary.

**Demurrer.** Failure to file a certificate of compliance 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 § 5950\(b\)](#).)

**Discovery.** An association is not required to provide plaintiffs with documents prior to ADR. ADR is not an excuse to engage in extensive discovery prior to litigation. ([Retzloff v. Moulton Parkway HOA](#).)

**CC&R ADR Provision.** An association's CC&Rs may contain a provision compelling the association and members to use alternative dispute resolution instead of the courts to resolve disputes. Such provisions are enforceable provided, however, that the provision is strictly followed. ([Mansouri v. Superior Court](#).)

## ADR-IDR LITIGATION COMPARISON

|                  | Internal Dispute Resolution (IDR)  | Alternative Dispute Resolution (ADR)  |  | Litigation   |
|------------------|--|---|--|--|
|                  |  | Mediation   | Arbitration  |  |
| <b>Structure</b> | Informal   | Informal  | Less informal  | Formal   |
| <b>Attorneys</b> | Attorneys generally not involved.  | Attorneys often involved.   | Attorneys usually involved, <a href="#">attorneys' fees</a> allowed.   | Parties can represent themselves in court but normally hire lawyers. <a href="#">Attorneys' fees</a> allowed.  |
| <b>Time</b>      | IDR usually within 30 days.  | Mediation within <a href="#">~90 days</a> .   | Arbitration should occur within <a href="#">90 days</a> but can take much longer.  | The case should come to trial within 12 to 24 months but can take up to five years depending on the court's calendar and how vigorously the parties litigate.  |
| <b>Cost</b>      | No cost.   | Depends on the mediator (~\$200-\$500 per hour) and length of mediation. Each side pays 1/2 the cost. | Depends on the arbitrator (~\$200-\$500 per hour), the contentiousness of the parties, and the length of arbitration. Fees and costs can range from \$10,000 to \$40,000 or more per side. | Depends on the aggressiveness of the parties, the hourly rates of the lawyers, how soon it gets to trial, and whether it is a jury or bench trial. Fees and costs can range from \$15,000 to \$600,000 or more per side. |
| <b>Misc.</b>     | HOA required to participate if requested by owner but owner not required to participate if requested by the association. | If pre-litigation mediation is unsuccessful, the dispute may escalate to arbitration or litigation.   | Extremely limited right of appeal. Prevailing party may be entitled to attorneys' fees and costs.  | May require an <a href="#">offer of ADR</a> before proceeding.   |

**NOTE:** The chart is for general comparison only. Actual situations may vary widely. Associations needing legal assistance can [contact us](#). To stay current with issues affecting community associations, subscribe to the [Davis-Stirling Newsletter](#).

## Restricting density

Restricting density is important because overcrowding strains an association's parking, drives up utility costs, overloads recreational facilities, disrupts the quiet enjoyment of residents, and depresses property values. A [reasonable](#) restriction upon the occupancy of condominium units is within the authority of an association. ([Ritchey v. Villa Nueva.](#)) Restrictions can be imposed provided they are not discriminatory.

### Discrimination.

The Federal Fair Housing Act prohibits restrictions on occupancy that discriminate on the basis of race, color, religion, national origin, sex, [familial status](#) or handicap. In particular, occupancy restrictions cannot be an excuse to discriminate against families with children. The Department Housing and Urban Development (HUD) has stated that, in appropriate circumstances, owners and managers may develop and implement reasonable occupancy requirements based on factors such as the number and size of sleeping areas or bedrooms and the overall size of the dwelling unit. ([Fair Housing Occupancy Standards.](#))

### Two Plus One Formula.

While opposed to discrimination, California's Department of Fair Employment and Housing (DFEH) has allowed restrictions using a "two-plus-one" formula, i.e., two persons per bedroom plus one additional person for the household. For example, a 1-bedroom unit could have 3 people, a 2-bedroom could have 5 persons, and so on. The formula is based on a 1998 adoption of the "[Keating Memo](#)" by the U.S. Department of Housing and Urban Development. It creates a presumption that 2 + 1 is reasonable but is subject to rebuttal based on factors such as:

- the size of each bedroom,
- the size and configuration of the residence,
- other physical limitations such as the capacity of the building systems,
- the age of the children, and state and local laws

**Other Formulas.** The Uniform Housing Code and California's Health & Safety Code both restrict the number of persons in a unit, using a formula based on bedroom square footage. In addition, many cities and counties will issue their own housing occupancy standards.

# **The Laws**

# CORPORATIONS CODE

## **Corporations Code §8322. Annual Report; Notice of Indemnification; Covered Transactions.**

(a) Any provision of the articles or bylaws notwithstanding, every corporation shall furnish annually to its members and directors a statement of any transaction or indemnification of a kind described in subdivision (d) or (e), if any such transaction or indemnification took place. If the corporation issues an annual report to all members, this subdivision shall be satisfied by including the required information in the annual report. A corporation which does not issue an annual report to all members, pursuant to subdivision (c) of [Section 8321](#), shall satisfy this section by mailing or delivering to its members the required statement within 120 days after the close of the corporation's fiscal year. Unless otherwise provided by the articles or bylaws and if approved by the board of directors, that statement may be sent by electronic transmission by the corporation ([Section 20](#)).

(b) Except as provided in subdivision (c), a covered transaction under this section is a transaction in which the corporation, its parent, or its subsidiary was a party, and in which either of the following had a direct or indirect material financial interest:

(1) Any director or officer of the corporation, or its parent or subsidiary.

(2) Any holder of more than 10 percent of the voting power of the corporation, its parent or its subsidiary. For the purpose of subdivision (d), an "interested person" is any person described in paragraph (1) or (2) of this subdivision.

(c) Transactions approved by the members of a corporation ([Section 5034](#)), under subdivision (a) of [Section 7233](#), are not covered transactions. For the purpose of subdivision (b), a mere common directorship is not a material financial interest.

(d) The statement required by subdivision (a) shall describe briefly:

(1) Any covered transaction (excluding compensation of officers and directors) during the previous fiscal year involving more than fifty thousand dollars (\$50,000), or which was one of a number of covered transactions in which the same interested person had a direct or indirect material financial interest, and which transactions in the aggregate involved more than fifty thousand dollars (\$50,000).

(2) The names of the interested persons involved in such transactions, stating such person's relationship to the corporation, the nature of such person's interest in the transaction and, where practicable, the amount of such interest; provided, that in the case of a transaction with a partnership of which such person is a partner, only the interest of the partnership need be stated.

(e) The statement required by subdivision (a) shall describe briefly the amount and circumstances of any loans, guaranties, indemnifications or advances aggregating more than ten thousand dollars (\$10,000) paid or made during the fiscal year to any officer or director of the corporation pursuant to [Section 7237](#); provided that no such report need be made in the case of a loan, guaranty, or indemnification approved by the members ([Section 5034](#)) or a loan or guaranty not subject to the provisions of subdivision (a) of [Section 7235](#).

*(Amended by Stats. 2004, Ch. 254, Sec. 29. Effective January 1, 2005.)*

## COLLECTION POLICY

Dues are expected to be paid on the 1<sup>st</sup> of every month. Late status and fees apply after the 15<sup>th</sup> of every month.

Dues not paid for 45 days can be entered into the lien enforcement process.

**Delinquent Assessments.** Any installment or other portion of an Assessment not paid within fifteen (15) days after its due date shall be delinquent and shall be subject to interest and late charges not to exceed the maximum rate permitted by law, as well as all other Additional Charges. The Board, on behalf of the Association, may enforce the payment of any delinquent Assessment plus Additional Charges by bringing an action at law against any Owner personally obligated to pay the same, or by foreclosing the lien against the Owner's Unit by judicial or non-judicial foreclosure, except as prohibited by law. Except as prohibited by law, upon any delinquency in payment, the Association may, at its option, declare the entire balance of all sums then due or to become due from the Owner, immediately due and payable, which total sum may then be included in any suit, action, or other procedure initiated to collect such sums, including all Additional Charges. The Board may commence any procedure for the collection of delinquent Assessments upon its own decision.

### **30 Days**

At least 30 days before an association records a lien on a unit to collect a debt that is past due, it must give the owner of that unit written notice in the form of a pre-lien letter. The letter must be sent by certified mail and contain the following:

1. A general description of the collection and lien enforcement procedures of the association and the method of calculation of the amount, a statement that the owner of the separate interest has the right to inspect records, and the following statement in 14-point boldface type; if printed, or in capital letters, if typed:

**IMPORTANT NOTICE: IF YOUR SEPARATE INTEREST IS PLACED IN FORECLOSURE BECAUSE YOU ARE BEHIND IN YOUR ASSESSMENTS, IT MAY BE SOLD WITHOUT COURT ACTION.**

2. An itemized statement of the charges owed by the owner.
3. A statement that the owner is not responsible for charges, interest, and costs of collection, if the assessment was paid on time.
4. The right to request a payment plan.
5. The right to dispute the assessment debt by submitting a written request internal dispute resolution. (see attached chart)
6. The right to request alternative dispute resolution. (see attached chart)

For delinquencies less than \$1,800, some associations choose to collect the assessment, late fees, interest, and costs of collection by filing a small claims action. (Civ. Code§ 5720(b)(1).)

**Executive Session Vote.** The decision to initiate foreclosure must be made by the board of directors and may not be delegated to an agent of the association. The board must approve the decision by a majority vote of the directors in executive session. (Civ. Code§ 5705(c).)

**Open Meeting Minutes.** The vote must then be recorded in the minutes of the next open meeting of the board. However, boards must maintain the confidentiality of owners' names by identifying the property by the assessor's

parcel number rather than using the name of the owner. A board vote to approve foreclosure of a lien must take place at least thirty days prior to any public sale. (Civ. Code § 5705(c).) Failure to do so could be the basis for a legal challenge to the foreclosure action.

**Multiple Owners.** Whenever there are multiple owners on title living at different addresses, notice must be given to all owners at each address. It can be one letter with multiple addressees and addresses (all owners on title at all addresses) at the top of the letter, which can then be mailed to everyone. Any additional expenses can be included in the HOA's collection costs.

## **The California Foreclosure Process:**

### **Notice of Default**

#### **Day 120**

When your dues are officially in default, the Association must file a Notice of Default with the recorder's office. They must let you will be notified that a lien was filed within 10 days. The lien document is a legal document informing you that you are in a state of default on your dues. It will include information about your options for getting out of default. For example, you can pay all the back payments, along with interest and fees, to get out of default. You'll also need to keep up your insurance and property taxes.

Due to federal mortgage servicing laws, defined by the Consumer Finance Protection Bureau, your servicer must wait 120 days before making a first official notice, or before they file a judicial or nonjudicial foreclosure (described below).

If you cannot satisfy the outstanding balance, the home will continue to be in default.

### **Notice of Trustee Sale**

#### **Day 180**

After you've received a Notice of Default, you have 3 months in which to attempt to satisfy the balance. As mentioned above, that means paying all back payments, interest, and fees. After 3 months, the Association can officially set a date for the auction of your home. You will be notified that this has happened through a Notice of Trustee Sale that is typically sent to you via certified mail.

### **The Auction**

#### **Day 200**

After you've received a Notice of Trustee Sale, the Association can set a date for the auction. It must wait at least 20 days after the Notice of Trustee Sale is sent to you. The sale may be postponed by a bankruptcy filing or by the Association for up to a year, after which point a new Notice of Trustee Sale will be filed in order to continue on to auction the house to auction. At the auction, your home will be sold to the highest bidder.

#### **Nonjudicial Foreclosures in California**

Most California foreclosures are nonjudicial, meaning the Association does not have to go through a court to foreclose. If your home is sold in a nonjudicial foreclosure, your responsibility ends once the home is sold. You may have to pay fees relating to the sale, but you won't owe any more money on your dues even if the home sells for less than you owe. You may, however, still owe a mortgage, and that Association can knock the Association out of 1<sup>st</sup> position if the mortgage is in default.

You also have the "right of redemption." That means you can repurchase your home from whoever bought it at auction. If there was no deficiency, you may repurchase your home for up to 3 months after the sale.

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| <b>Attorneys</b> | Attorneys generally not involved.  | Attorneys often involved.   | Attorneys usually involved, <a href="#">attorneys' fees</a> allowed.   | Parties can represent themselves in court but normally hire lawyers. <a href="#">Attorneys' fees</a> allowed.  |
| <b>Time</b>      | IDR usually within 30 days.  | Mediation within <a href="#">~90 days</a> .   | Arbitration should occur within <a href="#">90 days</a> but can take much longer.  | The case should come to trial within 12 to 24 months but can take up to five years depending on the court's calendar and how vigorously the parties litigate.  |
| <b>Cost</b>      | No cost.   | Depends on the mediator (~\$200-\$500 per hour) and length of mediation. Each side pays 1/2 the cost. | Depends on the arbitrator (~\$200-\$500 per hour), the contentiousness of the parties, and the length of arbitration. Fees and costs can range from \$10,000 to \$40,000 or more per side. | Depends on the aggressiveness of the parties, the hourly rates of the lawyers, how soon it gets to trial, and whether it is a jury or bench trial. Fees and costs can range from \$15,000 to \$600,000 or more per side. |
| <b>Misc.</b>     | HOA required to participate if requested by owner but owner not required to participate if requested by the association. | If pre-litigation mediation is unsuccessful, the dispute may escalate to arbitration or litigation.   | Extremely limited right of appeal. Prevailing party may be entitled to attorneys' fees and costs.  | May require an <a href="#">offer of ADR</a> before proceeding.   |

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# DAVIS-STIRLING ACT

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## **Civil Code § 5730. Annual Statement of Collection Procedure.**

(a) The annual policy statement, prepared pursuant to [Section 5310](#), shall include the following notice, in at least 12-point type:

### NOTICE ASSESSMENTS AND FORECLOSURE

This notice outlines some of the rights and responsibilities of owners of property in common interest developments and the associations that manage them. Please refer to the sections of the Civil Code indicated for further information. A portion of the information in this notice applies only to liens recorded on or after January 1, 2003. You may wish to consult a lawyer if you dispute an assessment.

### ASSESSMENTS AND FORECLOSURE

Assessments become delinquent 15 days after they are due, unless the governing documents provide for a longer time. The failure to pay association assessments may result in the loss of an owner's property through foreclosure. Foreclosure may occur either as a result of a court action, known as judicial foreclosure, or without court action, often referred to as nonjudicial foreclosure. For liens recorded on and after January 1, 2006, an association may not use judicial or nonjudicial foreclosure to enforce that lien if the amount of the delinquent assessments or dues, exclusive of any accelerated assessments, late charges, fees, attorney's fees, interest, and costs of collection, is less than one thousand eight hundred dollars (\$1,800). For delinquent assessments or dues in excess of one thousand eight hundred dollars (\$1,800) or more than 12 months delinquent, an association may use judicial or nonjudicial foreclosure subject to the conditions set forth in Article 3 (commencing with Section 5700) of Chapter 8 of Part 5 of Division 4 of the Civil Code. When using judicial or nonjudicial foreclosure, the association records a lien on the owner's property. The owner's property may be sold to satisfy the lien if the amounts secured by the lien are not paid. (Sections [5700](#) through [5720](#) of the Civil Code, inclusive)

In a judicial or nonjudicial foreclosure, the association may recover assessments, reasonable costs of collection, reasonable attorney's fees, late charges, and interest. The association may not use nonjudicial foreclosure to collect fines or penalties, except for costs to repair common area damaged by a member or a member's guests, if the governing documents provide for this. ([Section 5725](#) of the Civil Code)

The association must comply with the requirements of Article 2 (commencing with [Section 5650](#)) of Chapter 8 of Part 5 of Division 4 of the Civil Code when collecting delinquent assessments. If the association fails to follow these requirements, it may not record a lien on the owner's property until it has satisfied those requirements. Any additional costs that result from satisfying the requirements are the responsibility of the association. ([Section 5675](#) of the Civil Code)

At least 30 days prior to recording a lien on an owner's separate interest, the association must provide the owner of record with certain documents by certified mail, including a description of its collection and lien enforcement procedures and the method of calculating the amount. It must also provide an itemized statement of the charges owed by the owner. An owner has a right to review the association's records to verify the debt. ([Section 5660](#) of the Civil Code)

If a lien is recorded against an owner's property in error, the person who recorded the lien is required to record a lien release within 21 days, and to provide an owner certain documents in this regard. ([Section 5685](#) of the Civil Code)

The collection practices of the association may be governed by state and federal laws regarding fair debt collection. Penalties can be imposed for debt collection practices that violate these laws.

## PAYMENTS

When an owner makes a payment, the owner may request a receipt, and the association is required to provide it. On the receipt, the association must indicate the date of payment and the person who received it. The association must inform owners of a mailing address for overnight payments. ([Section 5655](#) of the Civil Code)

An owner may, but is not obligated to, pay under protest any disputed charge or sum levied by the association, including, but not limited to, an assessment, fine, penalty, late fee, collection cost, or monetary penalty imposed as a disciplinary measure, and by so doing, specifically reserve the right to contest the disputed charge or sum in court or otherwise.

An owner may dispute an assessment debt by submitting a written request for dispute resolution to the association as set forth in Article 2 (commencing with [Section 5900](#)) of Chapter 10 of Part 5 of Division 4 of the Civil Code. In addition, an association may not initiate a foreclosure without participating in alternative dispute resolution with a neutral third party as set forth in Article 3 (commencing with [Section 5925](#)) of Chapter 10 of Part 5 of Division 4 of the Civil Code, if so requested by the owner. Binding arbitration shall not be available if the association intends to initiate a judicial foreclosure.

An owner is not liable for charges, interest, and costs of collection, if it is established that the assessment was paid properly on time. ([Section 5685](#) of the Civil Code)

## MEETINGS AND PAYMENT PLANS

An owner of a separate interest that is not a time-share interest may request the association to consider a payment plan to satisfy a delinquent assessment. The association must inform owners of the standards for payment plans, if any exists. ([Section 5665](#) of the Civil Code)

The board must meet with an owner who makes a proper written request for a meeting to discuss a payment plan when the owner has received a notice of a delinquent assessment. These payment plans must conform with the payment plan standards of the association, if they exist. ([Section 5665](#) of the Civil Code)

(b) An association distributing the notice required by this section to an owner of an interest that is described in Section 11212 of the Business and Professions Code that is not otherwise exempt from this section pursuant to subdivision (a) of Section [11211.7](#) of the Business and Professions Code may delete from the notice described in subdivision (a) the portion regarding meetings and payment plans.

*(Added by Stats. 2012, Ch. 180, Sec. 2. Effective January 1, 2013. Operative January 1, 2014, by Sec. 3 of Ch. 180.)*



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# **SUMMARY OF CALIFORNIA STATUTES RELATING TO ALTERNATIVE DISPUTE RESOLUTION**

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PLEASE TAKE NOTICE: California Civil Code Sections 5925 through 5965 address your rights to sue the association or another member of the association regarding the enforcement of the governing documents, the non-profit mutual benefit corporation law, and/or the Davis-Stirling Common Interest Development Act. The following is a summary of the provisions of Civil Code Sections 5925 through 5965, as enacted effective January 1, 2014.

In general, Civil Code Sections 5925 through 5965 encourages parties to a dispute involving enforcement of an association's governing documents, the non-profit mutual benefit corporation law, and/or the Davis-Stirling Common Interest Development Act to submit the dispute to a form of alternative dispute resolution (ADR) prior to filing a lawsuit. The form of ADR selected may be mediation, arbitration, conciliation or any other nonjudicial process that involves a neutral party in the decision making process. The intent of the statute is to promote speedy and cost-effective resolution of such disputes, to better preserve community cohesiveness and to channel disputes away from our state's court system.

Under Civil Code Sections 5925 through 5965, the form of alternative dispute resolution may be binding or non-binding and the costs will be borne equally or as agreed to by the parties involved.

Any party to a dispute regarding enforcement of the governing documents, the non-profit mutual benefit corporation law, and/or the Davis-Stirling Common Interest Development Act may initiate the process of ADR by serving a Request for Resolution on another party to the dispute. A Request for Resolution must contain: (1) a brief description of the nature of the dispute; (2) a request for ADR; and (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.

If the Request is accepted, the ADR must be completed within 90 days of the acceptance, unless otherwise agreed by the parties. Any Request for Resolution sent to the member of a separate interest must include a copy of Civil Code Chapter 7, Article 2 (Alternative Dispute Resolution), Sections 5925 et seq., in its entirety.

**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.**

Should the association or an individual member wish to file a lawsuit for enforcement of the association's governing documents 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 of small claims court (as of January 1, 2012, ten thousand dollars (\$10,000) for individuals or five thousand dollars (\$5,000) for homeowner associations), the law requires the association or the individual to file a certificate with the court stating that one or more of the following conditions has been satisfied: (1) ADR has been completed in accordance with the statute; (2) one of the other parties to the dispute did not accept ADR; and/or (3) preliminary or injunctive relief is necessary. Failure to file this certificate can be grounds for dismissing the lawsuit. There are limited exceptions to the filing of this required certificate for small claims actions, or some assessment disputes.

Furthermore, in any enforcement action in which attorney's fees and costs may be awarded, under Civil Code 5960, the court may consider any party's refusal to participate in ADR prior to the lawsuit being filed when it determines the amount of the award.

## **SUMMARY OF CALIFORNIA STATUTES RELATING TO INTERNAL DISPUTE RESOLUTION**

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Pursuant to Civil Code Section 5915 (Civil Code Section 5900, et seq.), either the Association or a Homeowner who is involved in a dispute regarding the Governing Documents, the non-profit mutual benefit corporation law, and/or the Davis-Stirling Common Interest Development Act may invoke the following procedure, which supplements the pre-litigation procedures described above (it does not replace such procedures):

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 an association may refuse a request to meet and confer. The association shall not refuse a request to meet and confer.
3. The board shall designate a director 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. The parties may be assisted by an attorney or another person at their own cost when conferring.
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.
6. 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:
  - i. The agreement is not in conflict with law or the governing documents of the common interest development or association.
  - ii. The agreement is either consistent with the authority granted by the board to its designee or the agreement is ratified by the board.
7. A member shall not be charged a fee to participate in the process.

## Availability of Minutes

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**Within 30 Days.** Open meeting board minutes, draft minutes proposed for adoption that are marked to indicate draft status, or a summary of the minutes of any meeting of the board of directors of an association, must be made available to members within 30 calendar days of the meeting. ([Civ. Code § 4950.](#))

**Corrections.** Once a draft has been prepared, the Secretary or Recording Secretary can distribute the minutes to the board for review and feedback to the Secretary on any corrections that need to be made. This does not violate the Open Meeting Act because it's not an email discussion. Instead, it is feedback from individual directors to the secretary on corrections and revisions. The draft minutes then go into the board packet for the next meeting for board discussion and approval.

**Distribute Upon Request.** The minutes, proposed minutes, or summary minutes must be distributed to any member of the association upon request. Associations may charge for [copying costs](#). Failure to provide minutes can result in penalties against the association. ([Civ. Code § 5235.](#))

**Unauthorized Publication.** Without board authorization, management companies do not have a "right" to publish draft minutes. As managing agents, they take their direction from the board. If the board instructs them, for whatever reason, to hold on the publication of draft minutes, the management company does not have a right to ignore the board's direction. The board must make minutes available in draft form for review by the membership within 30 days of the meeting. If there is concern about publishing draft minutes that may contain errors, boards should have the minutes sent to them for review and feedback to the minute-taker for corrections before they are posted.

**DRAFT Minutes.** As noted above, there is no requirement that draft minutes be posted. There is, however, a requirement that they be distributed to members who request it. If and when draft minutes are posted or distributed, they should have a large "**DRAFT**" stamp on the page or marked "**DRAFT only--not approved by the Board**" or something similar to indicate the minutes have not yet been approved by the board and may contain errors.

## Secondary Address Notification

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Upon receipt of a written request by an owner identifying a secondary address for purposes of collection notices, the association shall send additional copies of any notices required by this section to the secondary address provided. The association shall notify owners of their right to submit secondary addresses to the association, at the time the association issues the pro forma operating budget pursuant to Section 1365. The owner's request shall be in writing and shall be mailed to the association in a manner that shall indicate the association has received it. The owner may identify or change a secondary address at any time, provided that, if a secondary address is identified or changed during the collection process, the association shall only be required to send notices to the indicated secondary address from the point the association receives the request.