



## **Summary of California Statutes Relating To Alternative Dispute Resolution**

PLEASE TAKE NOTICE: California Civil Code Sections 1369.510 through 1369.590 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 the Civil Code Section 1369.510 through 1369.590, as enacted effective January 1, 2005.

In general, Civil Code Sections 1369.510 through 1369.590 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) such as mediation or arbitration prior to filing a lawsuit. The intent of the statute is to promote speedy and cost-effective resolution of such disputes, to better preserve community cohesiveness and to channel dispute away from our state's court system.

Under Civil Code Sections 1369.510 through 1369.590, 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 owner of a separate interest must include a copy of the Civil Code Chapter 7, Article 2 (Alternative Dispute Resolution), and Sections 1369.510 et seq. in its entirety.

**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.**

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 five thousand dollars (\$5,000), the law requires the association or the individual to file a certificate with the court stating the ADR has been complete prior to the filing of the suit. Failure to file this certificate can be grounds for dismissing the lawsuit. There are limited exceptions to the filing of this required certificate when (1) one of the other parties to the dispute refused ADR prior to the filing of the complaint, (2) preliminary or temporary injunctive relief is necessary, (3) small claims actions, or (4) some assessment disputes. Exceptions (1) and (2), however, must also be certified in writing to avoid the court's dismissing the action.

Furthermore, in any lawsuit to enforce the governing documents, while the prevailing party may be awarded attorney's fees and costs, under Civil Code 1354, 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.