



NORTHSTAR PROPERTY OWNERS ASSOCIATION INTERNAL DISPUTE RESOLUTION (IDR) AND ALTERNATIVE DISPUTE RESOLUTION (ADR) DISCLOSURES

Overview: The Northstar community is a planned development that is subject to California's Davis-Stirling Common Interest Development Act (California Civil Code §§4000 et seq.). In drafting that law, the California Legislature demonstrated a strong preference for providing tools and procedures at the owner association level to resolve disputes and to achieve enforcement of the private land use covenants and restrictions *without* the necessity for resorting to the State's already over-burdened judicial system. To that end, the Davis-Stirling Act gives owner associations the authority to: (i) impose fines pursuant to a published fine schedule, (ii) request that an owner/member appear before the Board to discuss a matter requiring enforcement or compliance, and (iii) ultimately and if necessary to become proactive in participating with a member in a series of progressive enforcement steps through the use of the internal dispute resolution (IDR) and alternate dispute resolution (ADR) procedures that are set forth below. For most matters involving enforcement of the recorded CC&Rs or interpretations of the Association's governing documents both the Members and the Association must abide by the IDR and ADR procedures that are summarized below:

Internal Dispute Resolution (IDR): Civil Code §§5900 through 5920 present an internal dispute resolution process ("IDR Process") that an Owner and the Community Association must pursue when a dispute arises that involves their respective rights, duties or liabilities of either party (i) under the Davis-Stirling Act; (ii) under the Mutual Benefit Corporation Law; or (iii) under the Governing Documents of the Association. When those sorts of disputes arise, the law instructs that the Association must provide a fair, reasonable and expeditious procedure for resolving the dispute. Here is the IDR process that this Association follows:

1. This IDR Process applies to-the Association as well as an Owner as a prerequisite to the filing of any litigation related to a dispute involving their respective rights, duties or liabilities under the governing documents, the Davis-Stirling Common Interest Development Act (D-S Act") and/or the nonprofit mutual benefit corporation law ("collectively "CID Dispute"). The IDR process need not be pursued as a prerequisite to efforts by the Association to collect delinquent assessments unless a member who is behind in the payment of assessments requests the opportunity to participate in IDR.

2. Either party (Association or Owner) to a CID Dispute may invoke the following procedure:

(a) The party may request the other party to meet and confer, in an effort to resolve the CID Dispute. The request shall be in writing.

(b) An Owner may refuse an Association request to meet and confer. The Association may not refuse an Owner's request to meet and confer.

(c) The Board hereby designates the President or in his/her absence, the Vice-President ("Board Designee"), as well as the CID Manager to meet and confer with the Owner. The Board Designee shall also have the right to request the Chairperson of any applicable Committee involved in the CID Dispute to assist the Board and attend the meet and confer session with the Owner. If the Association is pursuing litigation related to a delinquent assessment, the Board designates the Treasurer in lieu of the President as the Board Designee in the meet and confer IDR process.

3. Although not precluded, attorney participation in the IDR Process is discouraged in order to maintain direct discussions between the principals of the CID Dispute and to maintain the goal of resolving the dispute in an expeditious and cost-effective fashion. To the extent Owner requires that his/her/its attorney attend the IDR Process, the Owner shall be required to give five (5) business days' notice to the Association so that the Association can ascertain if it desires its corporate counsel to also attend.

4. The IDR process is designed to be informal. 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 CID Dispute.

5. A resolution of the CID 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. The Agreement reached by the Owner and the Board Designee binds the parties and is judicially enforceable if both the following conditions are satisfied:

(a) The Agreement is not in conflict with law or the governing documents of the Association; and

(b) The Agreement is ratified by the Board of Directors within thirty (30) days of the date that the Agreement is executed by the Owner and the Board Designee.

7. The Owner participating in the IDR Process cannot be charged a fee to participate in the IDR Process.

Alternative Dispute Resolution (ADR): In the process of progressive pre-litigation enforcement procedures set forth in the Davis-Stirling Act (at Civil Code §§5925 – 5960), Alternative Dispute Resolution or ADR is the last process that must be followed before a civil action can be filed for declaratory or injunctive relief (or those forms of relief coupled with a demand for damages not in excess of \$10,000) relating to (i) enforcement of the Davis-Stirling Act; (ii) enforcement of the Mutual Benefit Corporation Law; or (iii) enforcement of the Northstar Governing Documents.

ADR begins with either party (the Association or a Member) serving the other party, by personal delivery, first-class mail, facsimile transmission or other means reasonable calculated to provide actual notice, with a document called a “Request for Resolution”. That document must include a brief description of the dispute, a request for alternative dispute resolution, a notice that the recipient party has 30 days to respond, and a copy of the Davis-Stirling ADR provisions. The form of ADR that is proposed may be mediation, arbitration, conciliation or any other nonjudicial procedure so long as it involves a neutral third party in the dispute resolution process.

If the party receiving a Request for Resolution agrees to the ADR proposal, the parties are given a period of 90 days in which to complete the ADR (or longer if mutually agreed). The costs of the ADR process are borne as agreed among the parties. If a party refuses to participate in ADR, and a civil action is subsequently filed, the judge hearing the matter may consider that refusal when awarding legal fees.

Civil Actions in Court: If the pre-litigation IDR and ADR procedures summarized above fail to resolve a dispute, the Davis-Stirling Act instructs (at Civil Code §5975) that the CC&Rs are enforceable equitable servitudes, unless unreasonable, and that the covenants and restrictions can be enforced by either the Association or by an owner. The prevailing party in such a suit is entitled to an award of reasonable attorneys’ fees and costs (Civil Code §5975(c)).

