

Effectively Resolving Conflict In Your Community

Navigating through Your Association's Dispute Resolution Procedure

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It has been said that conflict in a relationship can be healthy. Can the same be said about conflict in your community?

It is not surprising that whenever you have many people of divergent cultural, ethnic, social or political backgrounds, who live within reasonably close proximity and share common property rights and obligations, you will have conflict. Addressing and resolving conflict in your association, however, doesn't have to be a destructive battle. With a well-defined dispute resolution procedure in place, coupled with a consistent approach to rule enforcement, you can achieve greater community-wide acceptance of and compliance with the rules governing your association. In the process, you can even maintain or even improve the health of your community.

By now you should be at least familiar with the revised statutory scheme for resolving disputes between the association and the owners that went into effect in January. The procedure – informally called internal dispute resolution or "IDR" – is set forth in Civil Code Section 1363.810 – 1363.850. IDR provides an additional layer of dispute resolution that is available to resolve a broad spectrum of community association disputes. With the addition of IDR, community associations have at their disposal a three-phased approach to resolving disputes before resorting to the Courts. Combined with a comprehensive dispute resolution philosophy, the dispute resolution laws indeed may help to resolve conflict or at least keep it from

escalating into costly, time-consuming litigation.

1. The Dispute Resolution Process Starts With Your Governing Documents.

Effective dispute resolution begins with your governing documents. If the use restrictions are vague or not clearly defined, they cannot be effectively enforced; if the rules are not reasonable or understandable, the members will ignore or reject them outright. Thus, it is critical to an effective dispute resolution philosophy that the CC&Rs and rules be fair, reasonable, relevant and understandable.

Equally important is communicating the rules and use restrictions to the community. The fact that an association's governing documents are to be provided to every owner at the time of purchase won't help build universal acceptance of and compliance with the community's rules and restrictions. Communication is particularly important to a greater understanding of the rules and their application to the community. Use newsletters or periodic notices to the community residents to remind them of particular use restrictions or rules. For example, a notice about removing holiday decorations at the beginning of the holiday season, or a newsletter column outlining the pool rules at the start of the summer season, would bring about greater compliance with the rules in this regard.

Finally, it is advisable to periodically review your association's use restrictions and rules to determine if they are still relevant to your community. Rules should evolve to reflect either changes in technology or in the needs

and desires of the community. Otherwise, the rules become obsolete, foster resentment or can be difficult to enforce. For example, a community that prohibited decorative patio cover lighting due to a perceived fire hazard, may wish to consider changing the rule to reflect community desires and improvements in lighting technology that provides fire-safe low-voltage lighting for patios.

2. Due Process: Notice And An Opportunity To Be Heard. The new dispute resolution procedure does not eliminate the basic requirement of due process, codified in Civil Code Section 1363(h). Whenever a board of directors is to meet to consider and impose discipline on a member, the member must have received written notice of the hearing, including the nature of the violation, and is to be given an opportunity to address the board at the disciplinary hearing. This is the first step of the dispute resolution process and occurs before IDR.

Because the written notice of violation is a prerequisite to imposing discipline on a member, the notice should be specific about the violation committed. Moreover, the notice should describe: 1) what the member must do to correct the violation, 2) invite the member to a hearing before the board if the violation is not corrected, 3) encourage the owner to correct the violation before the hearing, and 4) warn the owner of the consequences of noncompliance, including the imposition of fines.

3. Internal Dispute resolution ("IDR"). When the violation has not been corrected following the disciplinary hearing, or if an owner contests the violation imposed, the association is faced with the choice of whether to file suit to compel an owner's compliance. Internal Dispute Resolution ("IDR") provides a second phase of community association dispute resolution before proceeding to Court.

At the outset, the IDR statute mandates that associations adopt a "fair, reasonable and expeditious" procedure for resolving disputes over the Davis-Stirling Common Interest Development Act (Civil Code Section 1350 through 1378), the Corporations Code or the CC&Rs. The statute requires annual

disclosure to owners of the association's IDR procedure. The statute gives the association the option of adopting the "default" procedure set forth in the statute or implementing its own IDR procedure, provided it contains the following.

- a. The IDR request must be in writing; the owner may refuse, but the association cannot refuse a request for IDR;
- b. The association board of directors must designate a board member to meet with the member;
- c. The parties shall meet promptly and in good faith. The IDR procedure must provide for prompt deadlines for responding to the IDR request and for conducting the meet and confer; and
- d. The owner shall not be charged any fee or incur any costs in connection with the IDR.

A resolution through this meet and confer process binds the parties and is judicially enforceable provided the following: 1) the resolution is in writing, and signed by both parties; 2) the resolution is not in conflict with the association's governing documents; and, 3) the resolution is consistent with the authority granted by the board or is ratified by board.

4. Alternative Dispute Resolution: A Pre-requisite To Filing A Lawsuit. The familiar statutory Alternative Dispute Resolution procedure contained in Civil Code Section 1354 ("ADR") is now contained in Civil Code Sections 1369.510-1369.590. Statute ADR procedure requires that before owners and the association file a lawsuit for certain types of claims, that parties "endeavor" to submit their dispute to ADR. The statute expands the categories subject to ADR to include disputes over the governing documents, certain provisions of the Corporation Code, and the Davis-Stirling Act. The ADR statute still applies to lawsuits for declaratory and injunctive relief alone, or in connection with monetary claims of \$5,000 or less.

Like IDR, ADR must be initiated in writing. The initiating party must serve a Request for Resolution on the other party to the dispute. The Request must include 1) a description of the dispute, 2) a request for ADR, 3) notice

to respond to the Request within thirty (30) days or is deemed rejected and, 4) a copy of the actual ADR statute. The one significant change in the ADR procedure is that service of a Request for Resolution can now be made by personal delivery, mail or fax, or any other means reasonably calculated to provide notice.

As with IDR, an association must provide its members annual disclosure of the ADR statutory procedure and the consequences of not complying with the procedure. The Notice must include the all important warning that failure to comply with the ADR requirements may result in the loss of the member's right to sue the association or another member over the governing documents or Civil Code or Corporations Code.

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