

SUMMARY OF CIVIL CODE SECTION 1354 ALTERNATIVE DISPUTE RESOLUTION

Pursuant to the requirements of California Civil Code 1354, we are notifying you that under certain circumstances, all California community Associations and their individual members are to offer to participate in some form of Alternative Dispute resolution ("ADR") prior to initiating certain types of lawsuits.

Please be advised that 1354 could be subject to different interpretations as the statutory language has not yet been interpreted by any court. Each homeowner should consult with his/her own attorney regarding appropriate compliance with the statute.

I. SCOPE OF STATUTE:
Civil Code section 1354 applies only to lawsuits filed by other individual homeowners or community associations, involving enforcement of the governing documents, where the plaintiff seeks:

- A. Declaratory relief only;
- B. Permanent injunctive relief only (no request for temporary restraining order or preliminary injunction); or
- C. Either declaratory relief or injunctive relief, which also includes a claim for monetary damages of \$5,000.00 or less, and which does not relate to the collection of Association assessments, except as provided, effective, January 1, 1997 within Civil Code 1366.3.

If the lawsuit does not involve at least one of the above causes of action, neither the Association nor the member is legally required to offer to participate in some form of Alternative Dispute Resolution.

II. PROVISIONS OF THE STATUTE:

Assuming that the intended lawsuit involves at least one of the above categories of relief, then the party seeking to bring the lawsuit must first notify and offer to all parties in the dispute an opportunity to resolve the matter first by some form of Alternative Dispute Resolution (such as mediation or arbitration, either binding or non-binding), before bringing the lawsuit.

The only exceptions are:

- A. Where any applicable statute of limitations will run within 120 days following the filing of the lawsuit;
- B. Where the party filing the lawsuit certifies that either preliminary or temporary injunctive relief is necessary;
- C. For claims of monetary damages exceeding \$5,000.00
- D. For claims involving recovery of delinquent Association assessments
- E. The State does not apply to any cross-complaint.
- F. Where one of the parties has already refused some form of ADR prior to the filing of the lawsuit
- G. Where any party demonstrates to the court that dismissal of the action for failure to comply with the new ADR statute would result in "substantial prejudice" to one of the parties.

III. COMPLIANCE PROCEDURES:

The ADR process is initiated by one party serving all other parties with a "Request for Resolution", which shall include:

- A. A brief statement of the facts in dispute;
- B. A request for some form of ADR. The request must be accompanied by a copy of the new statute and served in the same manner as in small claims as provided in 116.340 of the California Code Civil Procedure;
- C. A notice to all parties that they are required to respond within 30 days of receipt of ADR if deemed rejected
- D. If the request for resolution is accepted by the "other party", the ADR procedure (such as mediation or arbitration) must be completed within 90 days of the receipt of the acceptance, unless the parties sign a written agreement extending the completion date.

The cost of ADR is to be borne by the parties. Unless the parties agree, no oral or written evidence or statements made at the ADR proceeding are admissible as evidence in the later lawsuit. The form of ADR may either be binding or non-binding, at the option of the parties.

IV. FAILURE TO PARTICIPATE IN SOME FORM OF ADR:

Should a party refuse to participate in ADR before the lawsuit is filed, the court may, in its discretion, take this refusal into consideration in determining the amount of attorney's fees and costs ultimately awarded at trial, even if the refusing party ultimately prevails at trial in the main action. In accordance with California Civil Code 1354, the Board of Directors of the Association hereby advises you of the following:

"Failure by any member of the Association to comply with the fulfilling requirements of 1354 of the Civil Code may result in the loss of your rights to sue the Association or another member of the Association regarding enforcement of the governing documents."

V. NO EFFECT ON VOLUNTARY PARTICIPATION IN ADR:

The parties may still agree, in writing, to refer any dispute involving enforcement of the Association's governing documents to some form of ADR, even in those categories of disputes which are technically outside of the statute.

Internal Dispute Resolution (IDR)

The Association has adopted the following Internal Dispute Resolution (IDR) procedure Pursuant to California Civil Code Sections 5900-5915. The procedure provided is fair, Reasonable, and expeditious, within the meaning of this article. Either party to a dispute Within the scope of this article may invoke the following procedure:

(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, stating the dispute issue. The maximum time for the Association to act on a request invoking the procedure is 45 days.

(2) A member of an Association may not refuse a request to meet and confer. The Association may not refuse a request to meet and confer.

(3) The Association's Board of Directors shall designate a member of the Board 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. Both the member and the Association's designee will have the opportunity to explain their position.

(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. If the member participates but the dispute is resolved other than by agreement of the member, the member has a right of appeal to the Association's Board of Directors.

An agreement reached under this section binds the parties and is judicially enforceable if both of the following conditions are satisfied:

(1) The agreement is not in conflict with law or the governing documents of the common interest development or Association.

(2) 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.

A member of the Association may not be charged a fee to participate in the process.