

**ALTERNATIVE DISPUTE RESOLUTION STATUTE
FOR COMMUNITY ASSOCIATIONS**

CIVIL CODE §5975

As Amended, January 1, 1997

Covenants and restrictions in Declaration as Equitable Servitudes;

Governing Document Enforcement Through Alternative Dispute Resolution

- (a) The covenants and restrictions in the declaration shall be enforceable equitable servitudes, unless unreasonable, and shall inure to the benefit of and bind all owners of separate interest in the development. Unless the declaration states otherwise, these servitudes may be enforced by any owner of a separate interest or by the association, or by both.

- (b) Unless the applicable time limitation for commencing the action would run within 120 days, prior to the filing of a civil action by either an association or an owner or a member of a common interest development solely for declaratory relief or injunctive relief, or for declaratory relief or injunctive relief in conjunction with a claim for monetary damages, other than association assessments, not in excess of five thousand dollars (\$5,000), related to the enforcement of the governing documents, the parties shall endeavor, as provided in this subdivision, to submit their dispute to a form of alternative dispute resolution such as mediation or arbitration. The form of alternative dispute resolution chosen may be binding or non-binding at the option of the parties. Any party to such a dispute may initiate this process by serving on another party to the dispute a Request for Resolution. The Request for Resolution shall include (1) a brief description of the dispute between the parties, (2) a request for alternative dispute resolution, and (3) a notice that the party receiving the Request for Resolution is required to respond thereto within 30 days of receipt or it will be deemed rejected. Service of the Request for Resolution shall be in the same manner as prescribed for service in a small claims action as provided in Section 116.340 of the Code of Civil Procedure. Parties receiving a Request for Resolution shall have 30 days following service of the Request for Resolution to accept or reject alternative dispute resolution and, if not accepted within the 30-day period by a party, shall be deemed rejected by that party. If alternative dispute resolution is accepted by the party upon whom the Request for Resolution is served, the alternative dispute resolution shall be completed within 90 days of receipt of the acceptance by the party initiating the Request for Resolution, unless extended by written stipulation signed by both parties. The costs of the alternative dispute resolution shall be borne by the parties.

- (c) At the time of filing a civil action by either an association or an owner or a member of a common interest development solely for declaratory relief or injunctive relief, or for declaratory relief or injunctive relief in conjunction with a claim for monetary damages, not in excess of five thousand dollars (\$5,000), related to the enforcement of the governing documents, the party filing the action shall file with the complaint a certificate stating that alternative dispute resolution has been completed in compliance with subdivision (b).

CIVIL CODE §5975 (contd.)

- The failure to file a certificate as required by subdivision (b) shall be grounds for a demurrer pursuant to Section 430.10 of the Code of Civil Procedure or a motion to strike pursuant to Section 435 of the Code of Civil Procedure unless the filing party certifies in writing that one of the other parties to the dispute refused alternative dispute resolution prior to the filing of the complaint, that preliminary or temporary injunctive relief is necessary, or that alternative dispute resolution is not required by subdivision (b), because the limitation period for bringing the action would have run within the 120-day period next following the filing of the action, or the court finds that dismissal of the action for failure to comply with subdivision (b) would result in substantial prejudice to one of the parties.
- (d) Once a civil action specified in subdivision (a) to enforce the governing documents has been filed by either an association or an owner or member of a common interest development, upon written stipulation of the parties the matter may be referred to alternative dispute resolution and stayed. The costs of the alternative dispute resolution shall be borne by the parties. During this referral, the action shall not be subject to the rules implementing subdivision (c) of Section 68603 of the Government Code.
 - (e) The requirements of subdivisions (b) and (c) shall not apply to the filing of a cross-complaint.
 - (f) In any action specified in subdivision (a) to enforce the governing documents, the prevailing party shall be awarded reasonable attorney's fees and costs. Upon motion by any party for attorney's fees and costs to be awarded to the prevailing party in these actions, the court, in determining the amount of the award, may consider a party's refusal to participate in alternative resolution prior to the filing of the action.
 - (g) Unless consented to by both parties to alternative dispute resolution that is initiated by a Request for Resolution under subdivision (b), evidence of anything said or of admissions made in the course of the alternative dispute resolution process shall not be admissible in evidence, and testimony or disclosure of such a statement or admission may not be compelled, in any civil action in which, pursuant to law, testimony can be compelled to be given.
 - (h) Unless consented to by both parties to alternative dispute resolution that is initiated by a Request for Resolution under subdivision (b), documents prepared for the purpose or in the course of or pursuant to, the alternative dispute resolution shall not be admissible in evidence, and disclosure of these documents may not be compelled, in any civil action in which, pursuant to law, testimony can be compelled to be given.
 - (i) Members of the association shall annually be provided a summary of the provisions of this section, which specifically references this section. The summary shall include the following language:

"Failure by any member of the association to comply with the pre-filing requirements of Section 5975 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."

CIVIL CODE §5975 (contd.)

The summary shall be provided either at the time the pro forma budget required by Section 1365 is distributed or in the manner specified in Section 5016 of the Corporations Code.

- (j) Any Request for Resolution sent to the owner of a separate interest pursuant to subdivision (b) shall include a copy of this section.