

PGA WEST MASTER ASSOCIATION

RE: SUMMARY OF THE PROVISIONS OF ALTERNATIVE DISPUTE AND INTERNAL DISPUTE RESOLUTION LAWS (Civ. Code Sections 5900-5920; 5925-5965)

Dear PGA WEST Master Association Member,

Current law provides a procedure for (1) informal (internal) dispute resolution, and (2) alternative dispute resolution, to assist in resolving disputes between the owners, and the association, or between owners themselves in some cases. The following is a summary of the two procedures.

1. "Internal dispute resolution" is available to any member, or the association, if there is a dispute between the owner and the association. This is separate and apart from the formal ADR (Alternative Dispute Resolution) requirements set forth in Civil Code Section 5925 et seq. The Association has adopted the following procedures as required under such law:

- A. The Association or an Owner may invoke the procedures described herein by submitting a request to the other to meet and confer in an effort to resolve any existing dispute. The request must be in writing.
- B. An Owner may refuse a request to meet and confer made by the Association with the understanding that further enforcement action may be taken if the dispute is not resolved. The Association may not refuse a request by an Owner to meet and confer.
- C. The Association's Board of Directors shall designate a Board member to meet and confer with the Owner.
- D. The designated Board member and the Owner shall meet promptly at a mutually convenient time and place. The parties shall explain their positions to each other and attempt, in good faith, to resolve the dispute.
- E. Any resolution of the dispute agreed to by the parties shall be set forth in writing and signed by the Owner and the designated Board member on behalf of the Association.
- F. An agreement reached under this procedure is binding on the Owner and the Association and is enforceable in court if both of the following conditions are met:
 - a. The agreement is not in conflict with law of the Association's governing documents.
 - b. The agreement is consistent with the authority granted by the Board of Directors to the designated Board member or is ratified by the Board.
- G. Owners will not be charged a fee to participate in this process.

The full procedure employed by PGA WEST Master Association is found in Civ. Code Section 5915.

PGA WEST MASTER ASSOCIATION

2. "Alternative dispute resolution" is different, and generally takes the form of mediation. In many cases, an invitation to participate in alternative dispute resolution is a prerequisite to initiating litigation to enforce the governing documents, the Davis-Stirling Act, or relevant portions of the Corporations Code. The offer of alternative dispute resolution is required to be made either by the owner seeking to enforce, or by the association if it seeks to enforce.

Section 5965 requires the association to provide a summary of the alternative dispute resolution provisions contained in the Davis-Stirling Act. Briefly, the form of alternative dispute resolution chosen by the parties may be binding or nonbinding, at the option of the parties. The offer of alternative dispute resolution is to be mailed or faxed to, or personally served on, the responding party, who shall have 30 days in which to accept or reject such an offer. Failure to accept the offer can constitute a rejection of the offer. The parties are to bear the costs of the procedure. Unless the parties choose mediation as the process for dispute resolution, the statements made in the context of dispute resolution are confidential and may not be used as evidence in a subsequent legal proceeding, except to the extent an executed agreement between the parties otherwise provides. A refusal to participate in alternative dispute resolution may result in a forfeiture of the right to recover attorney fees in a subsequent legal proceeding.

There are some exceptions to the obligation to first offer alternative dispute resolution, as when a statute of limitations is about to expire, when the matter is properly in small claims court, or when one party or the other intends to seek a restraining order or a preliminary injunction. And, after a lawsuit is filed, the court has the power to order the parties to alternative dispute resolution.

Finally, Section 5965 requires the following statement be included in this summary: "Failure of a member of the association to comply with the alternative dispute resolution requirements of Section 5930 of the Civil Code may result in the loss of member's right to sue the association or another member of the association regarding enforcement of the governing documents or the applicable law."