

CALIFORNIA CIVIL CODE SECTIONS 5925 — 5965 CONCERNING ALTERNATIVE DISPUTE RESOLUTION

California Civil Code Sections 5925 - 5965 address your rights to sue the association or another member of the association regarding the enforcement of the governing documents. The following is a summary of the provisions of Civil Code Sections 5925 - 5965:

In general, Civil Code Sections 5925 - 5965 encourage parties to certain disputes involving enforcement of an association's governing documents to submit the dispute to a form of alternative dispute resolution (ADR) such as mediation or arbitration prior to filing a lawsuit.

The form of ADR may be binding or non-binding, and the costs of the ADR shall be borne by the parties.

Any party to a dispute may initiate the process of ADR by serving a Request for Resolution on all other parties to the dispute. A Request for Resolution must contain:

- (1) a brief description of the dispute between the parties,
- (2) a request for ADR,
- (3) a notice that the party receiving the Request for Resolution is required to respond within 30 days of receipt or the Request will be deemed rejected, and
- (4) if sent to the owner of a separate interest, a copy of Civil Code Sections 5925 - 5965.

If the Request is accepted, the ADR must be completed within 90 days of receipt of the acceptance, unless otherwise agreed by the parties. Once a Request for Resolution is served, all applicable statutes of limitation are tolled as set forth in Civil Code Section 5945.

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 YOUR RIGHT TO SUE THE ASSOCIATION OR ANOTHER MEMBER OF THE ASSOCIATION REGARDING ENFORCEMENT OF THE GOVERNING DOCUMENTS OR THE APPLICABLE LAW.

The law requires the party filing a lawsuit for enforcement of the association's governing documents to file a certificate with the court stating that

- (1) ADR has been completed prior to the filing of the suit, or
- (2) ADR was not undertaken because one of the other parties to the dispute did not accept the terms offered for the ADR, or
- (3) ADR was not undertaken because preliminary or temporary injunctive relief is necessary.

Failure to file this certificate can be grounds for dismissing the lawsuit. Furthermore, while the prevailing party in any lawsuit to enforce the governing documents shall be awarded attorney's fees and costs, under Civil Code §5960 the court may consider whether a party's refusal to participate in ADR was reasonable when it determines the amount of the award.