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Homeowners associations rules enforcement using ADR

ALTERNATIVE DISPUTE RESOLUTION IS A STATUTORY PREREQUISITE FOR FILING A LAWSUIT IN THE HOA CONTEXT

Common-interest developments, often referred to as homeowners associations or HOAs, are treated as quasi-governmental entities under California law. One of the original purposes for forming HOAs was to enforce compliance with the association's governing documents against violating homeowners.

An association has the authority to enforce violations of the association's governing documents. (Civ. Code, § 5975.) Enforcement of the restrictions contained in the governing documents is considered the association's duty or responsibility. (*Duffey v. Superior Court* (1992) 3 Cal. App.4th 425, 431.) An association may be held liable for its failure to enforce those restrictions. (*Posey v. Leavitt* (1999) 229 Cal.App.3d 1236.)

So, how do associations enforce their governing documents? The governing documents include the covenants, conditions, and restrictions (also referred to as "CC&Rs"), the bylaws, architectural guidelines, and rules and regulations. Board members not only have the authority, but also the duty, to enforce compliance with the governing documents. (*Ibid*; *Duffey* Cal.App.4th at 431.) Associations do not have "police powers," but they can enforce rules through various legal mechanisms.

One of the primary tools is the ability to levy a monetary fine against members for non-compliance. The association typically delivers a "notice of violation" along with the threat of a potential fine. Another potential enforcement tool is suspending access to common area amenities.

When levying fines and suspending privileges fails to gain compliance, the association must determine whether to escalate enforcement. This may involve inviting a member to "meet and confer" through a statutory internal dispute resolution ("IDR") process. (Civ. Code, §§ 5900 et seq.) However, IDR is often ineffective as many noncompliant members have already been called to multiple hearings pursuant to the due process procedures inherent in the procedures for levying fines. Non-responsive members are unlikely to attend a voluntary meeting with the board when they have been reluctant to do so to date. That leaves an association with the decision to escalate the process to involve escalated legal dispute resolution processes.

Legal escalation to ADR

Alternative dispute resolution, or ADR, is a statutory prerequisite for filing a lawsuit in the HOA context. The statutes related to association participation in ADR can be found in the Davis-Stirling Common Interest Development Act ("Davis Stirling Act"), Civil Code sections 5930, et seq. These sections provide direction for associations that must escalate enforcement actions when other remedies, such as fines, have not achieved compliance from the owner. Neither an association nor a member may file an "enforcement action" or lawsuit in superior court unless the parties have first "endeavored" to submit the dispute to ADR. (See Civ. Code, § 5930, subd. (a).) While this requirement may appear procedural at first glance, there are practical and strategic reasons for this requirement.

ADR and enforcement action defined

"Alternative dispute resolution" is broadly defined to include "mediation, arbitration, conciliation, or other nonjudicial procedure that involves a neutral third party in the decision-making process." (Civ. Code, § 5925, subd. (a).) This expansive definition affords parties flexibility in selecting a dispute-resolution mechanism while still satisfying the statutory prerequisite to litigation. Importantly, the inclusion of a "neutral third party" distinguishes ADR from IDR, which is conducted between the owner and the board without such a third-party decision maker.

The Civil Code similarly defines the scope of disputes subject to the ADR requirement. An "enforcement action" includes any civil action, other than a cross-complaint, brought for purposes of enforcing: (1) the Davis-Stirling Act, (2) the Nonprofit Mutual Benefit Corporation Law, or (3) the association's governing documents. (Civ. Code, § 5925, subd. (b)(1)-(3).) In practice, this encompasses the vast majority of disputes between associations and members, including those involving CC&R enforcement, architectural violations, and rule compliance.

Exceptions to the ADR requirement

Notwithstanding the breadth of the ADR mandate, the statute carves out several notable exceptions. Offering ADR is not required where a party files a claim in small claims court (Civ, Code, § 5930, subd. (c)), where preliminary or temporary injunctive relief is necessary (Civ. Code, § 5950, subd. (a)(3)), or in disputes involving delinquent assessments unless the member requests ADR. (Civ. Code, §§ 5930(d), 5658(a).) These exceptions reflect legislative intent to preserve immediate judicial remedies in limited circumstances, particularly when timing or practicality outweigh the benefits of pre-litigation dispute resolution.

It is also important to note that if a homeowner dispute involves a matter outside of the three subject matter areas listed above, then the ADR prerequisite may not be "required" before filing a lawsuit for such a matter.

Participation in ADR and strategic considerations

A distinction exists between ADR and IDR with respect to participation requirements. When a member invokes IDR, the association is obligated to participate. (Civ. Code, § 5910, subd. (c).) However, no reciprocal statutory obligation exists requiring a member to participate in ADR when requested by the association, absent a governing document provision imposing such a duty. This asymmetry raises strategic considerations, particularly when a party seeks to avoid ADR altogether.

That said, refusal to participate in ADR is not without consequence. In an enforcement action where attorneys' fees may be awarded, the court may consider whether a party's refusal to participate in ADR was reasonable when determining the amount of fees and costs. (Civ. Code, § 5960.) This creates a potential financial disincentive for parties who unreasonably decline to engage in ADR, even where participation is not strictly mandated.

Initiating ADR: request for resolution

ADR is initiated through service of a "Request for Resolution" pursuant to Civil Code section 5935. The request must include, among other things, a description of the dispute, a formal request for ADR, notice of the response deadline, and a copy of the statutory ADR provisions if the responding party is a member. (Civ. Code, § 5935, subd. (a).)

This formalized process ensures that both parties are adequately informed of the dispute and the statutory framework governing ADR, while also creating a clear record of compliance with the statutory requirements.

ADR timelines and procedural deadlines

The Civil Code imposes strict timelines governing the ADR process. A responding party has 30 days to accept or reject a Request for Resolution, after which the request is deemed rejected if no response is provided. (Civ. Code, § 5935, subd. (c).) If accepted, the parties must complete ADR within 90 days, unless extended by written agreement. (Civ. Code, § 5940, subd.(a).)

These timelines impose a structured framework that encourages prompt resolution, while also preventing indefinite delay of enforcement actions.

It is also advisable to discuss and select mediators during this step. Often, one party will provide three proposed mediators to the other party for their review and selection. It is important for both parties to review and select a mediator that they feel comfortable with before proceeding so that both parties feel that they had a fair opportunity to present their case in front of a balanced third-party neutral. A mediator with HOA experience is recommended since the area of HOA law is so niche; a mediator with HOA experience can really help parse the issues and provide insightful feedback and encourage conducive discourse between the parties.

Effect on statute of limitations

Service of a Request for Resolution has the important effect of tolling the statute of limitations. The limitations period is tolled during the 30-day response window and, if the request is accepted, during the 90-day ADR period, including any stipulated extensions. (Civ. Code, § 5945, subds. (a)-(b).)

This tolling provision is critical, as it allows parties to engage in ADR without risking the expiration of applicable claims, thereby reinforcing the Legislature's preference for pre-litigation resolution. The tolling effect means that parties nearing a statute-of-limitations deadline are not forced to file a lawsuit to preserve their rights and can attempt to resolve the conflict extrajudicially.

Certificate of compliance requirement

At the time an enforcement action is commenced, the initiating party must file a certificate of compliance with the initial pleading. (Civ. Code, § 5950, subd. (a).) This certificate must state that ADR has been completed, that ADR was offered but not accepted, or that injunctive relief is necessary. Failure to file the required certificate provides grounds for a demurrer or motion to strike, unless the court determines that dismissal would result in substantial prejudice. (Civ. Code, § 5950, subd. (b).)

This procedural requirement is not merely technical. It creates a potential early litigation vulnerability, particularly when parties fail to properly document their compliance with ADR prerequisites.

Costs of ADR and attorneys' fees

Unlike IDR, where associations may not charge participating members a fee (Civ. Code, § 5910, subd. (g)), the costs of ADR must be borne by the parties. (Civ. Code, § 5940, subd. (c).) This distinction is significant and, in some cases, may deter ADR participation, particularly for individual homeowners facing the expense of mediation or arbitration, which can cost thousands of dollars in third-party neutral fees.

Although parties generally bear their own attorneys' fees in ADR, those fees may be recoverable in subsequent litigation if the party prevails. In *Grossman v. Park Fort Washington Assn.* (2012) 212 Cal.App.4th 1128, the court held that reasonable attorneys' fees incurred during ADR are recoverable by a prevailing party in later litigation. Similarly, in *Rancho Mirage Country Club HOA v. Hazelbaker* (2016) 2 Cal.App.5th 252, the court confirmed that attorney's fees are recoverable in an action to enforce a settlement agreement reached through ADR.

These cases underscore the importance of complying with the ADR statutory requirements, including that the association accept and endeavor to participate when an owner initiates ADR, because failure to do so could affect the ability to recover attorneys' fees at the conclusion of the action. As discussed above, courts also consider the parties' participation in ADR prior to litigation when reviewing attorneys' fee requests in subsequent litigation.

Annual policy statement requirement

Finally, associations must include a summary of the ADR provisions in their annual policy statements. (Civ. Code, § 5965.) The statute mandates inclusion of specific language advising members that failure to comply with ADR requirements may result in the loss of the right to sue. (Civ. Code, § 5965, subd. (a).) This disclosure requirement reflects a policy objective of ensuring that members are informed about the procedural prerequisites for enforcement actions.

Practical implications and impact

ADR is a tool that brings disputing parties together to discuss their arguments and perspectives in the presence of a neutral third party or referee. The intent, and often outcome, is that an effective neutral can explain weaknesses or strengths in different arguments and attempt to move the disputing parties toward resolution. The reality is that, in the homeowners association context, emotion may cloud judgment and sound legal reasoning when a party feels dismissed or unacknowledged. Sometimes, despite clear legal standing to the contrary, there is an intense feeling of what is right or fair. Talented neutrals can acknowledge the emotional baggage and attempt to reason logically towards a mutually agreeable resolution to a dispute.

In practice, the ADR requirement introduces an additional procedural layer that associations and members must navigate before initiating litigation. While intended to promote efficient and cost-effective dispute resolution, ADR may also result in delays, increased upfront costs, and strategic maneuvering by parties seeking to leverage or avoid the process.

Moreover, questions remain regarding what constitutes a sufficient "endeavor" to submit a dispute to ADR, particularly where one party refuses to participate or engages only minimally in the process. This ambiguity creates potential risk, as failure to satisfy the statutory requirement may jeopardize an otherwise valid enforcement action.

Furthermore, ADR may seem fruitless where the parties are so far apart on an issue; it often seems that no compromise or agreement is possible. In those situations, the required process may seem pointless and a burden that costs even more attorneys' fees before ultimately ending up in litigation anyway.

Overall, Civil Code sections 5930 through 5975 establish a comprehensive ADR framework that significantly impacts how associations enforce their governing documents. As a result, associations should work closely with legal counsel to ensure compliance with these requirements, incorporate ADR procedures into their enforcement policies, and properly document all efforts to initiate and complete ADR before commencing litigation.

Board discretion in enforcement and litigation decisions

Another critical component of association enforcement authority is the scope of the board's discretion in determining how, and whether, to pursue remedies for violations of the governing documents. While the Davis-Stirling Act establishes procedural frameworks for enforcement, including ADR requirements, California courts have consistently recognized that boards retain broad discretion in selecting among available enforcement mechanisms.

As articulated in *Haley v. Casa Del Rey Homeowners Association* (2007) 153 Cal. App.4th 863, 875, an association is not required to pursue any particular enforcement remedy, and courts should defer to the association's decision-making in this regard. This principle is rooted in the broader doctrine of judicial deference, often referred to as the "business judgment rule," which limits judicial second-guessing of board decisions made within the scope of their authority.

The California Supreme Court in *Nahrstedt v. Lakeside Village Condominium Assn*, Inc. (1994) 8 Cal.4th 361, 374, articulated the governing standard:

> Generally, courts will uphold decisions made by the governing board of an owners association so long as they represent good faith efforts to further the purpose of the common interest development, are consistent with the development's governing documents, and comply with public policy.

This standard reflects a recognition that boards are best positioned to balance competing interests within the community and to make operational and economic decisions on behalf of the membership.

Discretion to decline litigation

One of the most significant applications of this deferential standard arises in the context of litigation. Associations are not required to resort to costly and time-consuming litigation to remedy violations of the CC&Rs. (See *Haley*, *supra*, 153 Cal.App.4th at 875.) Courts have acknowledged that litigation is often an inefficient and economically burdensome enforcement tool, particularly where the membership as a whole ultimately bears the costs.

The California Court of Appeal expressly recognized that it may make "little economic sense for the Association to pursue costly litigation against individual homeowners who refuse to comply with the CC&Rs, particularly since it is all the homeowners…who will ultimately bear the cost of such litigation," especially because homeowners may pursue their own litigation against other noncompliant homeowners. (*Ekstrom v. Marquesa at Monarch Beach Homeowners Assn.*, (2008) 168 Cal.App.4th 1111, 1126.) This observation is particularly relevant in light of the statutory ADR framework discussed above, which reflects a legislative preference for less costly, nonjudicial dispute-resolution mechanisms.

Moreover, as discussed above, the availability of alternative enforcement avenues, including ADR, internal dispute resolution, and fines, further supports a board decision to forgo litigation in favor of less burdensome options. The existence of these alternatives underscores that litigation is but one tool among many, not a mandatory course of action. However, with the statutory limitation on fines, an association's ability to enforce its governing documents has been severely handicapped, leaving boards with few alternatives besides ADR and litigation.

The business-judgment rule in the HOA context

The judicial deference afforded to association boards is grounded in long-standing corporate governance principles. In *Lamden v. La Jolla Shores Clubdominium Homeowners Assn.* (1999) 21 Cal.4th 249, 271, the California Supreme Court emphasized that courts should defer to board decisions regarding maintenance and repair obligations when the board acts after reasonable investigation, in good faith, and in the best interests of the association. Similarly, *Beehan v. Lido Isle Community Assn*. (1977) 70 Cal.App.3d 858, 865, reinforces that courts should not substitute their judgment for that of the board in matters involving discretionary decision-making.

This deferential standard serves an important policy function: It minimizes the risk of unproductive and costly litigation over internal governance decisions, including whether to initiate legal action. If courts were to second-guess such decisions routinely, associations could be compelled to pursue litigation in circumstances where doing so is economically irrational or contrary to the community's best interests.

The deference afforded to board decisions also operates as a constraint on member efforts to compel litigation. As reflected in the principles cited in *Beehan*, when a governing body, acting within the scope of its authority and in good faith, determines that initiating a lawsuit is not in the best interests of the association, individual members are generally not authorized to override that decision by pursuing litigation on the association's behalf. (*Ibid*.) Courts presume that directors act in good faith, and judicial interference is unwarranted in close or doubtful cases.

This principle is particularly important in the common interest development context, where board members must weigh decisions to pursue enforcement actions against the broader economic or operational interests of the community as a whole.

Recent legislation

HOAs face an added hurdle due to the new enforcement limitations imposed by AB 130, which amended Civil Code sections 5850 and 5855 to limit an association's ability to levy fines to a maximum of $100. On June 30, 2025, AB 130 was passed by the California Legislature and signed into law by Governor Newsom. The law became effective immediately.

The overall goal of AB 130, a housing bill, was to expedite housing and reduce costs by waiving some CEQA (California Environmental Quality Act) requirements. However, part of a separate bill, SB 681, with provisions that affect homeowners associations were also snuck in at the last minute.

AB 130 amended the Davis-Stirling Act to cap fines that associations can levy against violating members at just $100, as well as other changes to association enforcement procedures. (See Civ. Code, §§ 5850 and 5855.)

The enactment of AB 130 will severely limit an HOA's ability to enforce HOA rule compliance, since in many respects a $100 fine may be seen merely as the cost of doing business (e.g., for short-term rentals like Airbnb and VRBO). In practice, the result is that associations will need to seek legal counsel earlier in the enforcement process, both to navigate the hurdles and ambiguities inherent in the new law and to seek escalated enforcement remedies, like ADR and, eventually, lawsuits, sooner in the enforcement process.

Conclusion

Authorities confirm that associations have substantial discretion in determining how to address violations of their governing documents, including whether to pursue ADR and whether to litigate. While discretion is not unfettered, it must be exercised in good faith, consistent with the governing documents, and in furtherance of the association's purposes.

In practice, boards may reasonably determine that the costs, risks, and burdens of litigation outweigh the potential benefits, particularly in light of the ADR requirements set forth in Civil Code sections 5930 through 5975 and the availability of alternative enforcement mechanisms. It also reinforces the importance of documenting the board's decision-making process, including the factors considered and the rationale for selecting (or declining) a particular enforcement approach, to preserve the protections of the business judgment rule.

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