

Clear Lake Keys Property Owners Association
Enforcement, Fines, and Dispute Resolution

1.1 Violation Enforcement Procedure. For any alleged violation of the governing documents, these procedures will be followed:

- a. Any Resident, Owner, Director, or security personnel claiming a violation is encouraged to complete, sign, and submit an Alleged Violation Report to Management during regular business hours. Anonymous complaints will not be considered, unless independently verified.
- b. If an alleged continuing violation requires corrective action, the Owner will be sent notice identifying the alleged violation, the corrective action required, and the length of time the Owner has to remedy the alleged violation. For one time or intermittent alleged violations, the Association may send such notice or proceed with sending a hearing notice. The Association may, but is not required to send courtesy notices prior to sending a hearing notice.
- c. Prior to imposing disciplinary action, the Board shall hold a hearing to consider imposing remedies, in which case a notice shall be sent to the Owner at least 10 days prior to the meeting, stating the alleged violation and the Owner's right to appear before the Board of Directors at a hearing in executive session.
- d. All disciplinary hearings with the Board of Directors will be held in executive session. The Owner may be heard, orally or in writing, and may present evidence, including witness testimony and documents.
- e. If the Board determines the Owner has violated the governing documents, the Board may exercise any appropriate option allowed under the governing documents or the law:
 1. Seek any legal remedy, including, without limitation, imposing a lien and/or foreclosure on the Owner's property, where allowed by law;
 2. Impose one or more monetary penalties (fines);
 3. Correct (or cause to be corrected) the violation and assess the Owner for the costs and expenses of doing so, including attorneys' fees when allowed by law;
 4. Suspend voting rights and/or other membership and ownership privileges, such as voting rights, the right to serve on the Board of Directors, and the right to use of recreational Common Areas, effective no sooner than five (5) days after the notice of disciplinary action; and/or

5. Initiate Internal Dispute Resolution and/or Alternative Dispute Resolution as allowed by law.
- f. The Owner will be notified of any disciplinary action rendered by the Board of Directors within 15 days after the Board's determination. If the decision is to pursue a monetary fine, the Association Fine Schedule will apply.

1.2 Hearing Procedures. If you have been invited to attend a hearing for an alleged violation of the Association's Governing Documents, the following procedure will be followed:

- a. Statement of alleged violation(s) by acting chairperson.
- b. Presentation or statement of evidence.
 1. Each party (including the Board where appropriate) may make an opening statement, orally or in writing, starting with the explanation of the alleged violation;
 2. Each party may produce documentary evidence and testimony and to cross-examine the opposing party and the opposing party's witnesses;
 3. Each party may make a closing statement, orally or in writing;
 4. Formal rules of evidence will not apply and all evidence should be considered. The Board will give whatever weight it feels is appropriate to each piece of evidence;
- c. Any party may choose not to exercise any rights during the hearing process (e.g. not give an opening statement). The Board may specify other reasonable rules for the hearing, provided the alleged violator can confront and cross-examine the accuser and the witnesses (if their personal knowledge is necessary to prove the claim), and other corroborating evidence of the violation, and be heard and present evidence in his or her own defense.
- d. The alleged violator, complaining party and witnesses are excused. If the complaining party is a director with no personal stake in the dispute, such director may remain.
- e. Discussion and determination by the Board, or, that the matter will be taken under submission with a determination.
- f. Adjournment.
- g. Notice to Owner within 15 days of determining disciplinary action, if any. No notice is necessary if the Board takes no disciplinary action. The accuser is not entitled to any notice of action taken or not taken.

1.3 Violation Fine Schedule.

- a. If the Board, after Notice and a Hearing, finds a violation of the governing documents, a monetary penalty (fine) of up to \$75.00 may be imposed for each separate violation of the governing documents. In addition:
 1. For violations which are not continuous:
 - (a) If an Owner violates the same provision of the governing documents on two separate occasions within any 12-month period, the Owner will be subject to a monetary penalty (fine) of up to \$250.00 for the second offense.
 - (b) If the Owner violates the same provision three or more times within any 12-month period, the Owner will be subject to monetary penalties (fines) for the third and subsequent violations of up to \$500.00 each.
 2. For continuous violations:
 - (a) Continuous violations will be considered a violation every day from the first day of the violation until remedied in full.
 - (b) Continuous violations are subject to a monetary penalty (fine) of up to \$75.00 per month for the first month, and shall be doubled every month until the violation is remedied, subject to a maximum monetary penalty (fine) of \$600.00 per month. In this section, the maximum monetary penalty (fine) is \$7,200 per year.
 3. Multiple violations, whether non-continuous or continuous, may be addressed in one or more notice(s) to the Owner and may be the subject of and heard at one or more executive session hearing(s).
- b. Unless prohibited by other governing documents, and if allowed by law, the Board may take legal action or correct, remedy or cure a violation, and seek a reimbursement assessment against the Owner, or file a memorandum of costs or motion for attorneys' fees, to recover costs, expenses and attorneys' fees incurred by the Association.
- c. If a violation is found which causes the Association to incur a financial obligation or expense, then the Owner responsible for the violation will be subject to a reimbursement assessment in the amount of the obligation or expense incurred by the Association after proper notice and a hearing to the extent allowed by law.
- d. A monetary penalty (fine) imposed by the Association as a disciplinary measure for failure of an Owner to comply with the governing documents, may be treated as and is hereby an assessment that may become a lien against the

Owner's separate interest, but such lien may not be enforced by the sale of the interest under Sections 2924, 2924b, and 2924c (non-judicial foreclosure).

1.4 Alternative Dispute Resolution (ADR) Summary. California law, specifically *California Civil Code Section 5925-5965* ("ADR Statute") strongly encourages procedures alternative to litigation to resolve disputes about Governing Documents, enforcement between owners and their owners' associations. These procedures are called "Alternative Dispute Resolution" or "ADR". ADR typically includes mediation and binding and non-binding arbitration, which are intended either to clarify disputes preliminary to filing of any lawsuit, or to actually resolve disputes. California law also recognizes the complexity of living within a community association where neighbors do not always agree on how to enforce the Governing Documents against noncompliant Members. The law therefore requires owners' associations to take the lead ensuring all Members understand and comply with the governing documents. One of those requirements is for the Association to distribute annually to its Members a summary of ADR procedures.

a. *ADR Procedures*. The steps involved in ADR include the following procedures:

1. Either party to a dispute may serve a Request for Resolution ("Request") on the other party, either by certified mail (return receipt requested) or personal delivery. The Request must include: (i) a brief description of the dispute; (ii) a request for ADR; (iii) a Notice that the party to whom the Request is directed must respond within thirty (30) days or it will be deemed rejected; and (iv) a copy of the ADR statute, if such Request is made by the Association. The Request should also designate the type of ADR and the person or entity that will provide the ADR.
2. The party receiving the Request has thirty (30) days from the date he or she receives it to accept or reject ADR. If not accepted, the Request is deemed rejected.
3. If the party receiving the Request agrees to ADR, the parties have ninety (90) days to complete ADR. The parties may mutually agree to extend this period of time.
4. The costs of ADR will be borne equally by the parties.
5. When either party files a civil action in court, that party must file a Certificate stating that ADR has been completed in compliance with the law.
6. An association or a member may not file an enforcement action in the superior court unless the parties have endeavored to submit their dispute to alternative dispute resolution. This requirement applies only to an enforcement action that is solely for declaratory, injunctive, or writ relief,

or for that relief in conjunction with a claim for monetary damages not in excess of the jurisdictional limits stated in Sections 116.220 and 116.221 of the Code of Civil Procedure. Furthermore, it does not apply to a small claims action. Finally, except as otherwise provided by law, this section does not apply to an assessment dispute.

- b. *Failure to Follow Procedures.* Failure to follow the steps described above may have serious consequences. For example, such failure may allow a judge to decrease any attorneys' fee award to which a party would otherwise be entitled. Missing certain deadlines described in these procedures will "count against" any party in any legal action filed after the ADR procedure commences. In addition, if one party does not serve a Request and then files a lawsuit, the other party may be able to object to the lawsuit and prevent it from continuing. However, if the Request was properly served and then rejected by the other party, then the party filing the civil action may state that circumstance in the Certificate. Failure to file the Certificate in the civil action may be grounds for the other party to seek dismissal of the Complaint.

FAILURE BY ANY MEMBER OF THE ASSOCIATION TO COMPLY WITH THE PRE-FILING REQUIREMENTS OF SECTION 5930 OF THE ADR STATUTE MAY RESULT IN THE LOSS OF YOUR RIGHTS TO SUE THE ASSOCIATION OR ANOTHER MEMBER OF THE ASSOCIATION REGARDING ENFORCEMENT OF THE GOVERNING DOCUMENTS.

- c. *Prior to Initiating ADR.* The Association has adopted its own internal dispute resolution procedures in order to provide an expeditious and inexpensive forum for a fair hearing and resolution of disputed, concerning the Governing Documents, without having to take these matters to ADR or to court. Please consult those procedures, as set forth in Internal Dispute Resolution section of these Rules, and the complete text of the ADR Statute, if you wish to initiate legal action to enforce the Governing Documents.

1.5 Internal Dispute Resolution.

- a. *Purpose.* California Civil Code Section 5905 requires associations to develop a fair, reasonable and expeditious procedure for resolving disputes between an association and a member of the association involving their rights, duties, or liabilities under the Nonprofit Mutual Benefit Corporation Law, the Davis-Stirling Common Interest Development Act and the governing documents of the association. In order to accomplish this, the Association has adopted this Internal Dispute Resolution ("IDR") Procedure that provides for a fair, reasonable and expeditious method for the Association and a member to meet and confer regarding such disputes. The process is designed to help the parties reach an agreement to resolve any dispute at a mutually convenient time and

location and at no charge to the Member. IDR shall also be available to Residents who are not also Owners, and for purposes of this Section, a "Member" shall also include such Residents.

b. *Procedure.*

1. Either a Member of the Association or the Association as a party to a dispute may invoke the IDR procedure. Any such request shall be in writing and shall contain a statement requesting that the other party "meet and confer" in an effort to resolve the dispute pursuant to these IDR procedures or *Civil Code Section 5905*, or as amended. Any request to meet and confer which does not specifically reference these IDR procedures or Civil Code will NOT be considered a request to invoke this IDR procedure.
 - (a) If a Member requests the procedure, the Association shall participate in the procedure.
 - (b) If the Association requests the procedure, the Member may elect not to participate in the procedure.
2. Within ten (10) days of receipt of such request by the Member to meet and confer in an effort to resolve the dispute:
 - (a) The Association may request that the Member attend the next regularly scheduled Board meeting; or
 - (b) The Association may request that the Member attend an executive session of the Board or a judicial meeting, if applicable; or
 - (c) The Association may designate a member or members of the Board to meet and confer with the Member at a mutually convenient time and location. The parties may be assisted by an attorney or another person at their own cost when conferring. If the Owner intends to have an attorney present, that should be indicated on the request or acceptance, or as soon as possible thereafter, in order to allow for the Association to have its attorney present.
3. If the Association chooses option (1) or (2) above and the Member is unavailable to attend, the Member shall notify the Association in writing that the Member is unavailable and shall request to meet and confer with the Association in an effort to resolve the dispute during one of the following meetings:
 - (a) The next regularly scheduled Board meeting;

- (b) The next regularly scheduled judicial meeting, if applicable;
 - (c) A special meeting of the Board called to specifically address the dispute;
 - (d) A meeting with a designated Board member or members at a mutually convenient time and location within ten (10) days of the Member's notice.
4. Anytime the Member is to meet and confer with the Board at a regular or special meeting, the Board shall meet and confer with the Member in executive session.
 5. If the Member and the Association meet and confer in an effort to resolve the dispute, but the dispute is resolved other than by agreement of the Member, the Member shall have a right of appeal to the Board of Directors.
 6. 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, or by the Board members in attendance during the Board meeting, judicial hearing, or executive session. Any such agreement shall be binding on both parties and shall be judicially enforceable by either party if both of the following conditions are met:
 - (a) The agreement is not in conflict with the law or the Governing Documents.
 - (b) The agreement is either consistent with the authority granted by the Board of Directors to its designee or the Board of Directors ratifies the agreement.