



# WOLF CREEK MAINTENANCE CORPORATION

## SUMMARY IN COMPLIANCE WITH CALIFORNIA CIVIL CODE SECTIONS 1363.850 AND 1369.590 Adopted 3/22/06

### Internal Dispute Resolution & Alternative Dispute Resolution

Pursuant to California Civil Code Sections 1363.850 and 1369.590, the following is provided as a summary of the statutory provisions of the codes providing for internal dispute resolution and alternative dispute resolution procedures.

**I. California Civil Code Sections 1363.810 - 1363.850 (Internal Dispute Resolution). These provisions supplement the statutory provisions for alternative dispute resolution under California Civil Code Sections 1369.510 - 1369.590.**

These provisions apply to a dispute between the Association and a member involving their rights, duties, or liabilities under the Davis-Stirling Common Interest Development Act, Civil Code Section 1350, et seq.; the California Non-Profit Mutual Benefit Corporation Law, Corporations Code Section 7110, et seq.; or the Governing Documents of the Association. It is in addition to the requirements of California Civil Code Section 1369.510, et seq., setting forth alternative dispute resolution procedures.

Either party to a dispute within the scope of Civil Code Section 1363.810 - 1363.850 may invoke the following procedures:

- A. The party may request the other party to meet and confer in an effort to resolve the dispute. The request shall be in writing.
- B. A Member of the Association may refuse a request to meet and confer. The Association may not refuse a request to meet and confer.
- C. The Association's Board of Directors shall designate a Member of the Board to meet and confer.
- D. The parties shall meet promptly at a mutually convenient time and place, explain their positions to each other, and confer in good faith in an effort to resolve the dispute.
- E. 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.

An agreement reached under these terms binds the parties and is judicially enforceable if both of the following conditions are satisfied:

- 1. The agreement is not in conflict with law or the governing documents of the Association.

2. The agreement is either consistent with the authority granted by the Board of Directors to its designee or the agreement is ratified by the Board of Directors.

A member of the Association may not be charged a fee to participate in the Internal Dispute Resolution process.

## **II. California Civil Code Sections 1369.510 - 1369.590 (Alternative Dispute Resolution).**

### **A. Application Of The Statute.**

"Alternative dispute resolution" means mediation, arbitration, conciliation, or other non judicial procedure that involves a neutral party in the decision making process. The form of alternative dispute resolution chosen pursuant to this article may be binding or non binding, with the voluntary consent of the parties.

"Enforcement action" means a civil action or proceeding, other than a cross-complaint, for any of the following purposes:

1. Enforcement of this statute;
2. Enforcement of the Nonprofit Mutual Benefit Corporation Law, commencing with Section 7110; and,
3. Enforcement of the Governing Documents of the Association.

The Association or an Owner or a Member of the Association may not file an enforcement action in the superior court unless the parties have endeavored to submit their dispute to Alternative Dispute Resolution pursuant to this article.

Finally, California Civil Code Section 1369.510 only applies 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 five thousand dollars (\$ 5,000). This section does not apply to a small claim action and, except as provided by law, does not apply to an assessment dispute.

### **B. Procedures.**

#### **1. Making the Request.**

Any party to a dispute may initiate the process by serving on all other parties to the dispute a "Request for Resolution." The Request for Resolution shall include all of the following:

- (a) A brief description of the dispute between the parties;
- (b) A request for Alternative Dispute Resolution;
- (c) A notice that the party receiving the Request for Resolution is required to respond within thirty (30) days of receipt or the request will be deemed rejected;

- (d) If the party on whom the request is served is the Owner of a separate interest, a copy of this article.

Service of the Request for Resolution shall be by personal delivery, first-class mail, express mail, facsimile transmission, or other means reasonably calculated to provide the party on whom the request is served actual notice of the request.

A party on whom a Request for Resolution is served has thirty (30) days following service to accept or reject the request. If a party does not accept the request within that period, the request is deemed rejected by the party.

If the party on whom a Request for Resolution is served accepts the request, the parties shall complete the Alternative Dispute Resolution within ninety (90) days after the party initiating the request receives the acceptance, unless this period is extended by written stipulation signed by both parties.

Chapter 2 (commencing with Section 1115) of Division 9 of the Evidence Code applies to any form of Alternative Dispute Resolution initiated by a Request for Resolution under this article, other than arbitration. This means that all statements, negotiations, and documents made or created at, or in conjunction with ADR are confidential.

Finally, the costs of the Alternative Dispute Resolution shall be borne by the parties.

## **2. The Time Of The Request - Tolling Provisions.**

If a Request for Resolution is served before the end of the applicable time limitation for commencing an enforcement action, the time limitation is tolled during the following periods:

- (a) The thirty (30) day period for response to a Request for Resolution; and,
- (b) If the Request for Resolution is accepted, the ninety (90) day period for completion of Alternative Dispute Resolution, including any extension of time stipulated to by the parties in writing.

## **1. Certificate Of Compliance.**

At the time of commencement of an enforcement action, the party commencing the action shall file with the initial pleading a certificate stating that one or more of the following conditions is satisfied:

- (a) Alternative Dispute Resolution has been completed in compliance with this article;
- (b) One of the other parties to the dispute did not accept the terms offered for Alternative Dispute Resolution; or,
- (c) Preliminary or temporary injunctive relief is necessary.

Failure to file a certificate pursuant to subdivision (a) is grounds for a demurrer or a motion to strike unless the court finds that dismissal of the action for failure to comply with this article would result in substantial prejudice to one of the parties.

After an enforcement action is commenced, on written stipulation of the parties, the matter may be referred to Alternative Dispute Resolution. The referred action is stayed. During the stay, the action is not subject to the rules implementing subdivision (c) of Section 68603 of the Government Code.

#### **4. Costs Of ADR.**

The costs of the Alternative Dispute Resolution shall be borne by the parties.

#### **C. Failure To Participate In ADR.**

In an enforcement action in which fees and costs may be awarded pursuant to subdivision (c) of Section 1354, the court, in determining the amount of the award, may consider whether a party's refusal to participate in Alternative Dispute Resolution before commencement of the action was reasonable.

In compliance with California Civil Code Section 1369.590 the Association also provides you with the following:

**Failure of a Member of the Association to comply with the Alternative Dispute Resolution requirements of Section 1369.520 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.**