

Section 5

Dispute Resolution

Policy

It is the general policy of the Association to encourage the use of Alternative Dispute Resolution to resolve disputes between the Association and its Members when such disputes cannot be resolved through the ordinary course of business and communication.

Procedure

Claims. All “claims” will be subject to and resolved in accordance with the terms of this policy. The term “claim” includes all claims, disputes, and other controversies between a Member or Members and the Association arising out of or relating to:

1. Interpretation, application or enforcement of the Declaration or policies, procedures, rules or regulations of the Association;
2. Design or construction of improvements within the Association, or alleged defects in any such design or construction; or
3. Rights, obligations and duties arising under the Declaration, the policies, procedures, rules or regulations of the Association or applicable Colorado law, or the breach of the same, of or by the Association, the Association’s Board of Directors or any member thereof, or any Member.

Claims subject to agreement. Unless at least 67% of the Members in the Association agree otherwise, the following shall not be “claims” subject to this policy:

1. Any suit by the Association against a Member to collect assessments;
2. Any suit by the Association to obtain a temporary restraining order or injunction and such other equitable relief as the court may deem necessary for the Association to enforce the provisions of the Declaration, the policies, procedures, rules or regulations of the Association;
3. Any suit between or among Members, which does not include the Association as a party; and

4. Any suit in which there is an indispensable party who is neither a Member nor the Association.

Notice of Claim. All claims must be initiated by the party having a claim (the claimant) within a reasonable time after the claim has arisen, and in no event may a claim be initiated after the date when institution of legal or equitable proceedings based on such claim would be barred by the applicable statute of limitations. When the Association or any Member has a claim, as defined above, the claimant will submit all of their claims in writing to the other party (the respondent), stating plainly and concisely:

1. The nature of the claim, including persons involved and the respondent's role in the claim;
2. The legal basis or other specific authority out of which the claim arises; and
3. The specific relief or proposed remedy sought.

Negotiation. Commencing after the respondent receives the Notice of Claim, the parties will attempt in good faith to negotiate a resolution of the claim for thirty (30) days, or for such longer period as the parties may agree.

Mediation. If the parties are not successful in resolving the claim through negotiation, the claimant will submit the claim to mediation within thirty (30) days from the end of the negotiation period. Mediation will be completed using a trained independent mediator familiar with the governance of common interest communities acceptable to both parties. In the event that the parties cannot agree on a mediator, each party will select a qualified mediator. The mediators so selected will select a third mediator by mutual agreement, which mediator will conduct the mediation. If the claimant does not submit their claim to mediation within the time provided, does not appear for the mediation, or, in the event that the parties do not agree to a mediator, or fail to select a mediator as provided above, the claimant will be deemed to have waived the claim, and the respondent will be released and discharged from any and all liability on the claim.

Costs. The costs of mediation will be split equally between the parties, with each party bearing the cost of their own attorneys' fees, if any. In the event that a Member fails to pay their share of the cost, the unpaid amount will be considered an assessment against that Member's lot or unit, and may be collected as provided by the Declaration, the policies, procedures, rules and regulations of the Association, and applicable Colorado law.

Mediation Agreement. Any settlement or resolution of the claim through mediation will be documented in writing by the mediator and signed by the parties (the Mediation Agreement). If any party fails to abide by the terms of such agreement, then any party affected by the breach may file suit or initiate other proceedings to enforce the Mediation

Agreement without the need to again comply with this policy. Any suit to enforce the terms of the Mediation Agreement must be brought in the state or federal courts of the State of Colorado, with venue in Mesa County, Colorado. The Mediation Agreement may be presented to the Court as a stipulation of the parties either before or after the breach of its terms. In the event of a suit to enforce the Mediation Agreement, the party taking action to enforce the Mediation Agreement shall be entitled to recover from the non-complying party all costs incurred in enforcing the Mediation Agreement, including, but not limited to, attorneys' fees and court costs.

Mediation Certificate. If the parties do not settle the claim within thirty (30) days of submission of the claim to mediation, or within such other time as determined by the mediator or agreed to by the parties, the mediator will issue a certificate, signed by the mediator (the Mediation Certificate). The Mediation Certificate will state that the parties have attempted to mediate a resolution of the claim, that the parties are at an impasse, the date on which mediation was terminated, and any other matter the mediator deems appropriate.

Litigation. Either party may commence a judicial or administrative proceeding regarding the Claim after issuance of the Mediation Certificate. If the parties have not obtained a Mediation Certificate, as provided in this policy, that will serve as a bar to commencing judicial or administrative proceedings and any such proceedings may be stayed by the opposing party pending compliance with this policy.

Adopted November 16, 2007


Secretary