



## LAW ADVOCATE GROUP, LLP

9701 Wilshire Blvd. Suite 1000 Beverly Hills, CA 90212

Phone: 310-651-3065 Fax: 310-601-7110

[www.LawAdvocateGroup.com](http://www.LawAdvocateGroup.com)

# Doron F. Eghbali Homeowners Association Law

## [How To Handle HOA Disputes Internally](#)

Homeowners Association ("HOA") disputes could morph into protracted costly and legal battles. There are several procedures as set forth in the Davis-Stirling Common Interest Development Act ("Davis Sterling Act") and often HOA governing documents which set parameters and furnish guidelines to approach and deal with such disputes. This article explores in some depth some of the mechanisms and procedures to deal with HOA disputes internally before any party has commenced litigation.

### INTERNAL DISPUTE RESOLUTION PROCEDURES

Rather than litigation, many HOA disputes could be resolved through fines and suspension of rights. Under the Davis Sterling Act, HOA is required to provide a "fair, reasonable, and expeditious procedure for resolving a dispute between the association and a member involving rights, duties, or liabilities" (*CA Civil Code Section 5905*).

HOA should establish its own Internal Dispute Resolution mechanisms. In the absence of such established mechanisms by the HOA, the procedures set forth in *CA Civil Code Section 5915* apply as default provisions.

The default provisions set forth in *CA Civil Code Section 5915* provide:

- The request for an Internal Dispute Resolution or "Meet and Confer" MUST be in writing;
- The Meet and Confer may be requested by either member of HOA or HOA;
- The member of HOA may decline HOA request for Meet and Confer; however, the HOA may NOT decline such request if extended by member of HOA;
- The HOA must designate a member of the Board to attend the meet and confer;
- The parties should meet promptly at a convenient time and place and in good faith seek to resolve amicably their differences; and



**Law Advocate Group, LLP**

- The parties must put into writing the resolution reached at the meet and confer.

The resolution reached at the meet and confer is judicially enforceable, if (CC *Section 5915* (c) ):

1. The agreement is not in conflict with law or the governing documents of the common interest development or association.
2. The agreement is either consistent with the authority granted by the board to its designee or the agreement is ratified by the board.

**SALIENT CAVEATS**

The default procedure, as delineated in *CA Civil Code Section 5915*, is deficient in a number of areas concerning meet and confer requirement. Some of the deficiencies are as follows:

1. It does not provide whether or not counsel for other side is permitted to attend; and
2. It does not provide whether or not more than one member of the HOA is permitted to attend. It is advisable for both parties to attend with more than one member to reasonably lessen any disputes later on as to the minutiae of resolutions agreed on in this non-confidential meeting.

In light of the delineated deficiencies of the default mechanism in *CA Civil Code Section 5915*, the HOA could adopt the following resolutions:

1. The HOA to be represented by at least two (2) Board members;
2. The proceedings will be confidential;
3. Counsel is not permitted except with prior written consent of all parties; and
4. The parties shall use cost-effective alternative dispute resolution services.

**STATUTORY OBLIGATION TO OFFER ALTERNATIVE DISPUTE RESOLUTION BEFORE LITIGATION**

Neither HOA nor HOA member may commence civil litigation prior to seeking to resolve their differences through Alternative Dispute Resolution.

In fact, *CA Civi Code Section 5925* provides, in pertinent part:

"ARTICLE 3. Alternative Dispute Resolution Prerequisite to Civil Action [5925. - 5965.]

CC § 5925. As used in this article:

(a) “Alternative dispute resolution” means mediation, arbitration, conciliation, or other nonjudicial procedure that involves a neutral party in the decisionmaking process. The form of alternative dispute resolution chosen pursuant to this article may be binding or nonbinding, with the voluntary consent of the parties.

(b) “Enforcement action” means a civil action or proceeding, other than a cross-complaint, for any of the following purposes:

- (1) Enforcement of this act.



## Law Advocate Group, LLP

(2) Enforcement of the Nonprofit Mutual Benefit Corporation Law (Part 3 (commencing with Section 7110) of Division 2 of Title 1 of the Corporations Code).

(3) Enforcement of the governing documents. [Added by Stats. 2012, Ch. 180, Sec. 2. Effective January 1, 2013. Operative January 1, 2014, by Sec. 3 of Ch. 180]"

In addition, *CA Civil Code Section 5930* provides:

"(a) 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 pursuant to this article.

(b) This section 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.

(c) This section does not apply to a small claims action.

(d) Except as otherwise provided by law, this section does not apply to an assessment dispute. [Added by Stats. 2012, Ch. 180, Sec. 2. Effective January 1, 2013. Operative January 1, 2014, by Sec. 3 of Ch. 180]"

In addition, in civil enforcement proceedings, the party bringing the action must file a history of ADR action (or the inapplicability of the ADR requirement, as discussed shortly) with the civil enforcement complaint, *CA Civil Code Section 5950*. As importantly, failing to offer Alternative Dispute Resolution or to even participate in Alternative Dispute Resolution could be costly since the court under *CA Civil Code Section 5960* before awarding Attorney's Fees and Costs, should determine if such refusal was reasonable.

## EXCEPTION TO ALTERNATIVE DISPUTE RESOLUTION REQUIREMENT

The prerequisite to commencement of civil enforcement as enunciated above is not invariably applicable. The following situations are SOME of the exceptions:

- Small Claims Court Actions, see above *CA Civil Code Section 593(c)*
- When one party refuses to submit to Alternative Dispute Resolution, *CA Civil Code Section 5960(b)*.

## SALIENT NOTE

This article NEITHER supplements NOR supplants such rarefied topic. In fact, this article ONLY provides a rudimentary analysis of such esoteric topic. For more information, you can contact [Doron Eghbali, Esq.](#)

---

**[DORON EGHBALI](#)** is a Partner at the Beverly Hills Offices of [Law Advocate Group, LLP](#). [Doron](#) Primarily Practices [Business](#), [Real Estate](#) and [Entertainment Law](#). [Doron](#) Can Be Reached at: 310-651-3065. For More information, Please, Visit: [HERE](#).