

INTERNAL DISPUTE RESOLUTION FOR ASSOCIATIONS AND OWNERS

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Starting in January of 2005, the California State Legislature added another layer of dispute resolution statutes further designed to promote the internal resolution of disputes within common interest developments and avoid the filing of lawsuits. This relatively new process is set forth at Cal. Civil Code sections 1363.810 - 1363.850. These sections generally apply to a "dispute between an association and a member involving their rights, duties, or liabilities" under the governing documents or applicable law.

This dispute resolution process is commonly referred to as "IDR" or "Internal Dispute Resolution." The other dispute resolution process that has been around for a longer period of time and is also set forth in the Civil Code is commonly called "ADR" or "Alternative Dispute Resolution." The procedures for ADR are set forth at Cal. Civil Code sections 1369.510 - 1369.590. Oftentimes, people confuse the two processes, but in reality they are somewhat different as IDR tends to be less formal than ADR, and IDR is more oriented toward a quicker resolution.

IDR vs. ADR

	<u>IDR</u>	<u>ADR</u>
1.) Formalities	Less formal	More formal
2.) Time parameters	Shorter term(15-30 days max)	Longer up to 90 days or more
3.) Fees/costs	None charged to member	Each side pays one-half
4.) Mediator/arbitrator	None required	Required third party
5.) Attorneys	Not contemplated	Usually participate
6.) Owner participation	Not required	Not mandated, but Possible downside
7.) HOA Participation	Required	Not mandated, but Possible downside

Under the IDR statutes, the association has the option of creating its own internal dispute resolution procedure or simply plugging into the procedure already set forth in the statute at section 1363.840. Any association provided procedure must be "fair, reasonable, and expeditious." Also, the association provided procedure must make maximum, reasonable use of available local dispute resolution programs involving a neutral third party, including low-cost mediation programs such as those listed on the Internet Web sites of the Department of Consumer Affairs and the United States Department of Housing and Urban Development. Section 1363.830(a)-(g) then proceeds to outline the minimum requirements for any association developed procedure. As this section is fairly self-explanatory, there is no need to cover each of the minimum requirements in this article. The bottom line is that any association developed procedure needs to be fully compliant with section 1363.830. Also, any association developed procedure should be written down and adopted as a formal board resolution, or as a rule and regulation, and be distributed to all members. If the association chooses to adopt a rule and regulation, then the requirements of Cal. Civil Code sections 1357.130 - 1357.140 must be followed. These sections pertain to the procedures that must be followed when a board is contemplating the adoption of a rule and regulation concerning the resolution of disputes.

If an association does not develop its own internal process, section 1363.840 then provides the process that must be utilized. Section 1363.840 specifically states that the procedure it outlines is fair, reasonable, and expeditious. Also, it should be noted that either an owner or the association may trigger the procedures outlined under section 1363.840. However, please note that the association is compelled to participate in this process, but an owner is not. Thus, if an association triggers IDR with an owner, the owner can simply refuse to participate in the process, whereas if the tables are turned the association cannot refuse to participate.

Either party to a dispute covered by the IDR article may invoke the following procedures under section 1363.840 if none has been established by the association:

- 1.) The party shall send a written request asking the other party to meet and confer in an effort to resolve the dispute (the meet and confer should be an informal process that essentially involves a meeting of the parties to have a discussion of the issues in dispute);
- 2.) A member of the association may refuse a request to meet and confer, but the association may not;
- 3.) The board shall designate a member of the board to meet and confer (while this section only contemplates a single board participant, we have recommended in some instances that more than one director participate due to unique facts or possible security issues);
- 4.) 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 (note that attorneys and managers are left out of the process);
- 5.) If a resolution is reached, the resolution shall be memorialized in writing and signed by the parties, including the board designee on behalf of the association. The written agreement is binding on the parties and judicially enforceable if the agreement is not in conflict with the law or the governing documents of the association, and the agreement is consistent with the authority granted by the board to its designee or the agreement is later ratified by the board (this is the point where the association should exercise great caution because of the potential binding effect of any agreement; sometimes we counsel that if an agreement is reached it will later be reduced to writing once the full board and legal counsel have reviewed it).
- 6.) A member of the association may not be charged a fee to participate in the process (unlike ADR there is no splitting of the costs).

While not a perfect process, IDR does provide an informal means to resolve disputes early on before the parties become too polarized on an issue and before substantial resources are expended. At the end of the day, if this process is unsuccessful in resolving the dispute, the next step is typically a resort to ADR as outlined by section 1369.510, which involves a more formal process and higher resulting costs to the association and the owner. If an association does not already have its own internal IDR procedures in place, the process outlined in section 1363.840 is certainly a viable alternative that should work in most cases. Just proceed with caution in drafting any settlement agreement and involve legal counsel and management along the way so you can be certain that you are complying with the statutory requirements and protecting the interests of the association.