

# POLICY OF DISPUTE RESOLUTION BETWEEN ASSOCIATION AND OWNERS

1. **General Policy.** It is the general policy of the Association to encourage the use of Alternative Dispute Resolution (ADR) to resolve disputes involving the Association and an Owner. For the purposes of this policy, ADR is defined as an alternative procedure for settling a dispute through mediation, rather than through litigation. In the event of any dispute between the Association and an Owner, except for Exempt Claims as defined below, the Association and the Owner shall make every reasonable effort to resolve the dispute in good faith through mediation by following the procedures set forth below prior to filing suit in any court. Nothing in this policy shall prohibit the parties from mutually agreeing to resolve a dispute through informal voluntary negotiations without the use of a mediator at any time.
2. **Exempt Claims.** The following claims shall be exempt from the provisions of this policy (Exempt Claims):
  - a. Any action by the Association against an Owner to collect regular, special, or noncompliance assessments or other sums due to the Association, including by way of example and not limitation, filing a Notice of Lien, commencing litigation, or foreclosing a statutory or judgment lien, and except with respect to claims of violations committed by the Association, any and all claims of violations by any Owner or other alleged violator of any Governing Document.
  - b. Any claim that would be deemed barred due to the running of the applicable statute of limitations as of the date of the Notice of Claim.
  - c. Any claim arising from a situation that involves an imminent threat to the peace, health, or safety of the community.
3. **Procedure for All Other Claims.** The Association and any Owner must attempt to resolve a dispute, other than an Exempt Claim, through mediation following the procedures below as a precondition to filing litigation.
  - a. **Mandatory Mediation.**
    - i. **Notice of Claim.** The Association or any Owner having a claim (Claimant) against the other party (Respondent) shall notify each Respondent in writing of the claim (Notice). The Notice shall state:
      - (1) The nature of the claim, including all the factual details supporting the claim, including the date, time, location, and names and contact information for all persons known to be involved as a party or witness to any event;

- (2) The basis of the claim (i.e., the provisions of the Declaration, the Bylaws, the Articles, rules or regulations, statute, or other authority out of which the claim arises); and
  - (3) The Claimant's proposed resolution of the dispute.
  - (4) The Notice shall be mailed to each Respondent by Certified Mail with Return Receipt and a Certificate of Mailing. The date of mailing shall be as evidenced by the Certificate of Mailing obtained from the U.S. Postal Service.
- ii. **Response to Notice of Claim.** Within fifteen (15) days of the date of mailing of the Notice, the Respondent shall submit to the Claimant a written response (Response) to the Notice that shall state:
  - (1) The Respondent's position and any defenses to the claim alleged in the Notice or any counterclaims, including any factual details supporting Respondent's position, including the date, time, location, and names and contact information for all persons known to involved as a party or witness to any event; and
  - (2) The Respondent's proposed resolution of the dispute.
  - (3) The Response shall be mailed to each Claimant by Certified Mail with Return Receipt and a Certificate of Mailing. The date of mailing shall be as evidenced by the Certificate of Mailing obtained from the U.S. Postal Service.
- iii. **Selection of Mediator.** Upon Claimant's receipt of Respondent's Response, the Claimant shall contact the State of Colorado Office of Dispute Resolution to locate an approved mediator for Gunnison County. Alternatively, the parties may use any other mediator mutually agreed upon by the parties.
- iv. **Mediator Fees.** The fee of the mediator shall be shared on an equal basis between the parties.
- v. **Scheduling of Mediation.** The mediator shall contact the parties and schedule a date for mediation with the parties that shall be within thirty (30) days of the date of the mailing of the Notice. If the Mediator is unable to schedule the mediation within the thirty-day period, the parties may mutually agree to extend the deadline for conducting the mediation or select another mediator.
- vi. **Failure of to Participate in Mediation.** If the Claimant fails to participate in mediation, the claim shall be deemed waived and the Respondent released from any future liability based upon the facts of the original claim.

- vii. **Failure of Respondent to Participate in Mediation.** If the Respondent fails to participate in mediation, the Claimant may proceed with litigating the claim.
  - viii. **Failure to Resolve Dispute through Mediation.** If the parties do not settle the matter through mediation, either party may proceed with litigating any claim or counterclaim raised in the Notice or Response.
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- 4. **Notices.** If a Notice or Response is given by the Association, the Notice or Response shall be mailed, postage prepaid, by first class mail addressed to the involved Owner(s) of the Association at the address(es) shown in the records of the office manager. If given by an Owner, notice shall be mailed, postage prepaid, by first class mail addressed to Arrowhead Improvements Association, Inc. The office manager shall promptly deliver copies of the Notice or Response to the President and Secretary of the Association.
  - 5. **Settlement Agreement.** Any settlement between the parties shall be in writing and signed by both parties and the mediator, if any.
  - 6. **Costs.** Each party shall bear his own costs incurred in resolving the claim through mediation, including any attorney fees and any other expenses.
  - 7. **Amendment.** This policy may be amended from time to time by the Board.