



# Alternative Dispute Resolution

## Nevada Real Estate Division

*Presented by the Training Officer; Office of the Ombudsman for Owners in Common-Interest Communities and Condominium Hotels*

1



# Introduction

- The Alternative Dispute Resolution (ADR) process is **required** under NRS 38.310 before filing certain civil action in court.







3

# Civil Action

NRS 38.310

- ▶ No **civil action** based upon a claim relating to:
  - a) The interpretation, application or enforcement of any covenants, conditions or restrictions (CC&Rs) applicable to residential property or any bylaws, rules or regulations adopted by the association (governing documents); or
  - b) The procedures used for increasing, decreasing or imposing additional assessments upon residential property.
- ▶ may be commenced in any court in this State unless the action has been submitted to **mediation or, if the parties agree, has been referred to the referee program.**

# Civil Action – Continued

NRS 38.310

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- ▶ If the civil action concerns real estate within a planned community subject to the provision NRS 116 or real estate within a condominium hotel subject to the provisions of NRS 116B, all administrative procedures specified in ***any governing documents of the association must be exhausted prior to filing in court.***
- ▶ A court ***shall*** dismiss any civil action which is commenced in violation of NRS 38.310(1).

# Important Definitions

38.300

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- ▶ **“Assessments”** means:
  - ▶ Any charge which an association may impose against an owner of residential property pursuant to a declaration of covenants, conditions and restrictions; and
  - ▶ Any penalties, fines, fees and other charges which may be imposed by an association.
- ▶ **“Civil action”** includes an action for money damages or equitable relief. The term does not include an action in equity for injunctive relief in which there is an ***immediate threat of irreparable harm, or an action relating to the title to residential property.***
- ▶ **“Residential property”** includes real estate within a planned community subject to the provisions of NRS 116 or real estate within a condominium hotel subject to the provisions of NRS 116B.
  - ▶ The term does not include commercial property if no portion thereof contains property which is used for residential purposes.





6

# Statute of Limitations

NRS 38.350

- Any statute of limitations applicable to the claim is tolled from the time the claim is submitted until the conclusion of the mediation, referee program or arbitration.

# Process

NRS 38.330



Parties participating in ADR can either utilize the Division's referee program or mediation.



Both parties must agree to participate in the referee program.



If both parties do not agree, the dispute will automatically default to mediation (NRS 38.310).



If the dispute is not resolved by mediation or the referee program, parties may agree to proceed to binding or nonbinding arbitration or have the issue settled in civil court.

# ADR vs. Intervention Affidavit

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- ▶ If a complainant files for ADR **and** submits an *Intervention Affidavit (IA) Form 530* based on the same or similar issues, the Division will **not** continue investigating the IA.



# Process

1. The person initiating the claim is the “**Claimant.**” The person or entity with whom the claimant has a dispute is the “**Respondent.**”
2. ADR Claim form 520 **must** be filled out completely, including:
  1. A brief statement of facts giving rise to the dispute and relevant provisions of the governing documents at issue.
  2. One original and two copies of the Claim Form with the Division (3 forms total).
  3. Selection of either the mediation or referee program.
  4. A \$50.00 filing fee payable to “NRED” either by check, money order or cash must be submitted. Do not send cash in the mail. This fee is non-refundable and cannot be subsidized.
3. A claimant must have submitted for ADR within **1 year of discovery** of the alleged violation to be **eligible for subsidy.**
  1. The Subsidy Application for Mediation form 668 **MUST** be submitted with the ADR Claim Form 520 to apply for subsidy.
4. If there are multiple respondents, complete and include Additional Respondent form 520b for each.

# Serving

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- ▶ After a claim is filed, the claimant will receive a packet from the Division (***within 7-10 business days***) by mail that must be served on the Respondent within **45 days**.
  - ▶ The package to serve will have a copy of processed ***ADR Claim Form 520, Overview Form 523***, a blank ***Respondent Answer Form 521***, a ***Subsidy Application for Mediation Form 668***, and an ***Affidavit of Service form*** showing the required documents that must be served. are multiple respondents, each respondent must be served separately and a separate Affidavit of Service Form, completed by the server, must be notarized and filed with the Division for each respondent.

## ➤ Who may serve the required documents?

- The sheriff of the county where the respondent resides or any citizen of the United States over eighteen years of age **other than the claimant**.
- **A process server** can also be used.

## ➤ How do you serve?

- Service shall be made upon the president or other corporate head, secretary, managing agent, etc.
- Service shall be made upon the respondent personally, by leaving copies at his/her dwelling with a person of suitable age, or by delivering a copy to an agent authorized by law to receive service of process.

# When Service is Not Possible

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- ▶ When service upon the respondent is not possible because of the respondent's absence from the state or inability to locate the respondent:
  - ▶ An Affidavit of Due Diligence can be provided to the Division.
  - ▶ The Division then determines whether adequate efforts were made to serve the respondent(s).
  - ▶ If determined that they were, the Division will provide a letter to the claimant acknowledging their unsuccessful efforts to participate in the ADR program.



# Respondent

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- Respondents must review all documents served upon them.
- Respondents are required to file with the Division a completed Respondent **form 521** (original and one copy) **within 30 days after being served**, and must mail a copy to the Claimant.
- Respondents should provide a brief statement of their defense regarding the allegations.
- Lastly, a \$50.00 nonrefundable filing fee payable to "NRED" either by check, money order or cash must be provided at the time of filing.
- If request for subsidy is filed **after** the mediator is assigned, **the request will be denied**.

# Selection of Referee/Mediator

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- The last page of Claim Form 520 contains a list of current mediators and referees to select from, pursuant to NRS 38.340.
- Claimants and Respondents may view the resumes of all mediators and referees on the Division's website at [www.red.nv.gov/cic](http://www.red.nv.gov/cic) prior to making a selection.
- The Respondent will state on Form 521 whether he/she agrees with the Claimant's selection.
- If both parties cannot agree on a mediator or referee, one will be randomly appointed by the Division.
- Once a mediator or referee is appointed, he/she will govern the process going forward.

# The Referee Program

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- The referee program is fully subsidized (aside from the filing fees).
- Referees are licensed attorneys approved by the Division to hear disputes.
- The referee will schedule a hearing for parties to present their evidence.
- Not less than **5 days** before the hearing, or as requested by the referee, parties must provide documentation to support their positions.
- All documents must be sent directly to the referee and simultaneously mailed to the opposing party. **Do not send documents to the Division.**
- The referee will determine what evidence may be considered.
- Parties may agree to have a referee render a decision based solely on evidence provided, without having a hearing.

# Referee Program Cont'd

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- The referee's decision will be provided to the parties and the Division within **30 days**.
- Parties have **60 days** to dispute the decision and request that the complaint be heard by a judge.
- The referee's decision must be confirmed in court by the winning party within **1 year** to make it enforceable and binding.
- If a monetary award is granted, it may not exceed \$7,500 and **may NOT include** attorneys' fees and costs.
- Claims involving multiple parties cannot participate in the referee program.



# Mediation

NRS 38.330

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- If disputing parties **do not agree** to participate in the referee program, they must go through mediation.
- Mediation **must be completed within 60 days** of the filing of the claim, unless otherwise provided by an agreement of the parties.
- The mediator will contact the parties to schedule a date and location for the mediation.
- Disputing parties must submit a statement to the mediator **no later than five (5) days** before the mediation setting forth the issues in dispute.
- The mediator will not share information received with the opposing party.
- Mediation must **not exceed 3 hours** at a cost **not to exceed \$500**, unless the parties agree to an extension. The fee for additional hours **must not exceed \$200 per hour**.

# Mediation, Cont'd

NRS 38.330

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- Mediators are certified and approved by the Division.
- The mediator promotes agreement and compromise.
- If mediation is successful, parties sign a written agreement before leaving the office. This becomes enforceable between the parties.
  - The Division does not receive a copy of the mediation agreement.
- If mediation is unsuccessful (an agreement is not reached), the parties may proceed to court with a letter of completion provided by the Division or, if both parties agree, apply to the arbitration for a decision.

# Mediation, Cont'd

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- ▶ Any mediator selected from the list and/or appointed to a claim must be available within the geographic area. “Geographic area” means an area within 150 miles from any residential property or association which is the subject of an ADR claim.

# Notification to Division

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- ▶ Mediators and Referees have **30 days** to submit results to the Division.
- ▶ The Division will then issue a written notice to the parties stating that parties utilized the ADR process and were either successful or unsuccessful.
- ▶ This notice then allows the parties to pursue their case in court if they so choose.



# Enforcement

NRS 38.330

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- ▶ A decision agreed to by the parties as a result of **mediation** may be enforced as any other written agreement.
- ▶ If the parties have agreed to **referee** and received a decision, the decision is nonbinding until confirmed in court.
  - ▶ If neither party commences a civil action within 60 days of the referee's decision, the decision can be confirmed by a court at the request of any party within 1 year of the decision.

# Service Timeline

22

Claimant files ADR Claim form 520, Subsidy Application for Mediation form 668 (if applicable), Additional Respondent Form 520B (if applicable) & \$50 filing fee w/ Division

**Within 2 business days**

Division mails to Claimant package to serve upon the Respondent

**Within 45 days**

Claimant must serve Respondent w/ package

**Within 10 days**

Affidavit of service must be completed by server, notarized & filed w/ Division

**Within 30 days**

Respondent must complete Respondent Form 521, accompanied w/ \$50 filing fee.

If the **Respondent fails to file Form 521 & \$50 filing fee with the Division after being served**, he/she risks having the case closed. The Division will provide a letter of completion to the claimant, so they can pursue the claim directly in court.

# Mediation Subsidy

- ▶ Parties must submit Form 668; Subsidy Application for Mediation **at the time of filing Claim Form 520 or Response Form 521 with the Division.**
- ▶ Mediation may be subsidized **up to \$250 per party; \$500 per mediation**, if subsidy is approved.
- ▶ If parties choose to extend the mediation, it will be at a cost not to **exceed \$200 per hour.**
- ▶ Unit owners may receive a subsidy **once** during each fiscal year of the State (July 1 to June 30) for each unit owned.
- ▶ Associations must be in good standing with the Secretary of State and the Office of the Ombudsman to receive subsidy.
- ▶ Mediators may require a deposit from both parties before proceedings begin. Any outstanding amount due to the mediator must be paid within **10 days from the date of the mediation.**

# Arbitration

## NRS 38.330

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- ▶ Before commencing a civil action in the proper court, the parties named in the claim may agree to arbitration if the parties participated in mediation in which an agreement was not obtained or if a written decision and award have been issued by the Referee.
- ▶ Unless the parties agree to binding arbitration, the arbitration is nonbinding.
  - ▶ The cost of arbitration conducted pursuant to NRS 38.330(2) must not exceed \$300 per hour.
- ▶ If the parties agree to arbitration, they shall select an arbitrator from the list. If the parties fail to agree upon an arbitrator, the Division shall randomly appoint an arbitrator from the list and provide their name to each party.
- ▶ Arbitrators must be available within the geographic area.
  - ▶ “Geographic area” means an area within 150 miles from any residential property or association which is the subject of an ADR claim.

# Arbitration, Cont'd

## NRS 38.330

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- ▶ An arbitrator **shall**, no later than 5 days after their selection, provide to the parties an information statement. The written informational statement must:
  - ▶ Be written in plain English;
  - ▶ Explain the procedures and applicable law relating to the arbitration of a claim conducted pursuant to NRS 38.330 including:
    - ▶ The procedures, timelines and applicable law relating to confirmation of an award ([NRS 38.239](#)), vacation of an award ([NRS 38.241](#)), judgement on an award ([NRS 38.243](#)), and any applicable statute or court rule governing the award of attorney's fees or costs to any party; and
  - ▶ Must be accompanied by a separate form acknowledging that the party has received and read the information statement, which must be returned to the arbitrator by the parties not later than 10 days after receipt of the informational statement.

# Arbitration Awards

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## ➤ **Nonbinding Arbitration Award:**

- If neither party to an arbitration award starts a civil action in court within **30 days** after service of the award, either party may within **1 year** apply to the court for a confirmation of the award pursuant to NRS 38.239.
- Confirmation of the decision makes it an order of the court and a judgment binding on the parties.

## ➤ **Binding Arbitration Award:**

- If neither party to an arbitration award moves to vacate the award within **90 days** after the service of the award, for the very limited reasons given in NRS 38.241, either party may apply to the court for verification of the award under NRS 38.239, and obtain a judgment, which can be enforced through the court.



# Division

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- ▶ Division staff:
  - ▶ can assist parties in ***understanding the process and forms used.***
  - ▶ ***cannot provide legal advice.***
  - ▶ ***do not employ or otherwise control*** the performance of mediators, referees or arbitrators.
  - ▶ ***have no stake in the outcome of any dispute.***
- ▶ Any amount of subsidy for mediation is paid directly to the mediator.
- ▶ The Division has ***no authority to collect any sums payable to a mediator.***

# ADR Forms

Number	Name	Rev. Date	Pages
<u>520</u>	Alternative Dispute Resolution (ADR) Claim Form	09/25/2018	4
<u>520B</u>	Alternative Dispute Resolution – Additional Respondent Form	03/13/2012	1
<u>521</u>	Alternative Dispute Resolution (ADR) Respondent Form	07/06/2016	2
<u>523</u>	Residential Common Interest ADR Overview	02/27/2019	6
<u>668</u>	Subsidy Application for Mediation	07/05/2016	2

# Questions?

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- ▶ <http://red.nv.gov> – Main Page
- ▶ [CICOmbudsman@red.nv.gov](mailto:CICOmbudsman@red.nv.gov) – Email Questions
- ▶ [http://red.nv.gov/Content/CIC/Program\\_Training/](http://red.nv.gov/Content/CIC/Program_Training/)