

IA vs. ADR

Intervention Affidavit (Form 530) vs.
Alternative Dispute Resolution (Form 520)

Presented by the Training Officer for the Office of the Ombudsman;
Common-Interest Communities & Condominium Hotels Program



Introduction

- The Office of the Ombudsman for CICs is tasked with receiving complaints from those owning, renting and working in HOAs in Nevada.

Who can file a complaint with our office?

- A complaint can be filed by any *aggrieved party* of the association within 1yr of discovery of an alleged violation.

Who can the complaint be filed against?

- A complaint can be filed against any association: declarant, officer, employee, board director (Form 530), community manager (Form 514a), or reserve study specialist (Form 514b).
- The goal of this class is twofold:
 1. To describe the two different complaint pathways and the internal process of our office for each; and
 2. To clarify *why* we ask for certain things or recommend one form/process over another.

Why file an Intervention Affidavit (IA)?

- Because you have a complaint regarding some aspect of your association.
- The Intervention Affidavit process is a service of the Real Estate Division to help people resolve **disputes** within their common-interest communities.
- Any person who knowingly files a false or fraudulent affidavit with the Division may be forced to pay an administrative fine of up to \$1,000.

Before Submitting an IA

1. The complainant must **contact the person or persons with whom he or she has a dispute via a letter sent by certified mail, return receipt requested**, to the person's last known address.

There are less stringent requirements for a [Statement of Fact](#) used to file against a community manager. Make sure you are completing the correct form, against the right party, before you begin the process.

- In the letter, the complainant must describe:
 - Alleged violations of NRS 116 or the association's governing documents (1 year statute of limitation),
 - Any resulting damages, and
 - Proposed actions to cure the alleged violations within a set timeframe.

Why Send the Letter?

- Anytime a party is accusing another party of violating HOA law, the same procedure must be followed.
- Similar to the letter required prior to filing a complaint described on the previous slide, an executive board may not impose a fine for an alleged violation without mailing a written notice:
 - Specifying in detail the provisions violated and how,
 - Stating the proposed fine if not cured within a set timeframe, and
 - Providing a reasonable opportunity to contest or cure the alleged violation at a hearing.
- An option to cure is always provided before the situation escalates.

Before Submitting an IA

2. The complainant must allow a reasonable amount of time for a response to the letter (at least two weeks is suggested).
- If, after contacting the person, no response is received or a resolution is not reached, the complainant may complete the Intervention Affidavit (Form 530) and submit it to the Office of the Ombudsman.

Completing the Affidavit

- The *claimant* is the aggrieved person completing the form.
- The *respondent* is the individual who committed the alleged violation that has aggrieved the claimant.
- Attached to the Affidavit must be a **copy of the certified letter** sent to the respondent **AND** the **certified return receipt** from the post office.

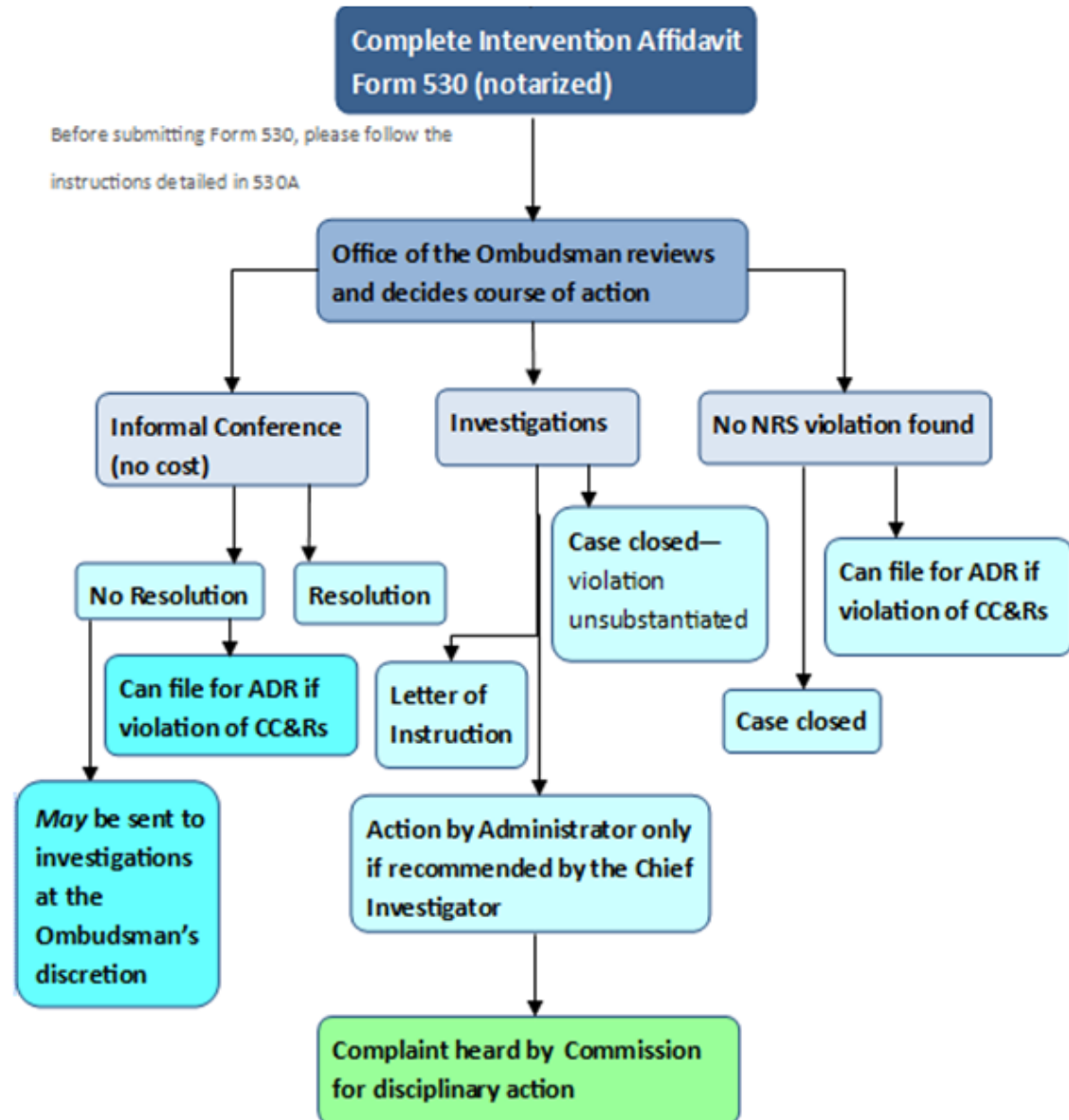
Completing the Affidavit

- **COMPLAINT** – State how you have been aggrieved [car inappropriately towed, fined without proper notice, community in disrepair, etc.]
- **BRIEF STATEMENT OF FACTS** – State what took place [briefly tell the story]
- **RESOLUTION** - State how you think the violations can and should be resolved [option to cure]
- **SUPPORTING PROVISIONS** - State the provisions of NRS 116 and/or the provisions of the governing documents that have been violated [provide specific sections and subsections]
- **DO NOT** write “see attached,” leaving these sections without detail.
- **Relevant attachments** such as financial statements, notices, reserve summaries, etc. should be included as evidence when applicable.

Completing the Affidavit

- Any allegation not indicated in the letter and not listed on the affidavit cannot be:
 - discussed during the conference,
 - investigated by the Division, or
 - considered by the Commission for disciplinary action.
- The claimant must sign the affidavit in the presence of a notary and have the affidavit notarized.
- The completed affidavit package is then mailed or hand delivered to the Ombudsman's Office.

Upon Receipt by our Office



If the Administrator escalates a complaint to the Commission

- The Commission shall hold a hearing within 90 days.
- At least 30 days before the hearing, the Division shall give the respondent written notice, including a copy of the complaint and all relevant communications.
- The respondent must file an answer not later than 30 days after the date of the notice. The answer must:
 - contain an admission or a denial of the allegations and any defenses upon which the respondent will rely; and
 - be delivered personally to the Division or mailed by certified mail, return receipt requested.

If the Commission finds that the respondent has committed a violation

- The Commission may:
 - Issue an order directing the respondent to cease and desist.
 - Issue an order directing the respondent to take affirmative action to correct any conditions resulting from the violation.
 - Impose an administrative fine of not more than \$1,000 for each violation.
 - Order the respondent to pay the costs of the proceedings (NRS 116.785).
- If the Commission finds that the executive board has committed a violation, it may additionally:
 - Order an audit of the association.
 - Order the members removed from office or position.
 - Require the executive board to hire a certified community manager (NRS 116.790).
- The Commission shall notify all parties to the complaint of its decision, in writing by certified mail, not later than 60 days after the date of the final hearing [NRS 116.780].

If the Commission finds grounds for action against a community manager (514a)

- The Commission may:
 - Revoke or suspend the manager's certificate for at least 1 year;
 - Impose a fine up to \$5,000 for each violation;
 - Refuse to renew or reinstate a certificate [especially if a fine has not been paid (NRS 116A.400)];
 - Place the community manager on probation;
 - Require the manager to pay restitution.

Why file for Alternative Dispute Resolution (ADR)?

- The ADR process is required before parties involved in an association dispute **may file a civil action in court.**
- ADR is **ONLY** for parties with a dispute involving the **interpretation, application or enforcement of governing documents** or the procedure used for increasing, decreasing or imposing additional **assessments.**
- If a complainant files for ADR **and** submits an intervention affidavit based on the same or similar issues, the Division will not continue investigating the intervention affidavit.

Completing the Claim Form

- The person making the claim of violation is the *claimant*. If there is more than one claimant, additional claimants must be listed on Form 520A.
- A claimant must submit for ADR on **Form 520** within 1 year of discovery of the alleged violation.
- The claimant must provide a brief statement of fact giving rise to the dispute and include relevant provisions of the governing documents at issue.
- The *respondent* is the person or entity who the claimant is filing against. Additional respondents must be listed on Form 520B.

Completing the Claim Form

- Parties participating in ADR can either utilize the Division's **referee** program or **mediation**.
- Both parties (not more than two) must agree to participate in the **referee** program or the dispute automatically defaults to **mediation**.
- **Referees** are licensed attorneys approved by the Division to hear disputes and render a decision based on evidence provided.
 - If unhappy with the decision, parties have 60 days to request that the complaint be heard by a judge.
 - If happy with the decision, it is non-binding until confirmed in court (within 1 year).
- **Mediators** are certified and approved by the Division to promote agreement and compromise.
 - If mediation is successful, parties sign a written agreement before leaving the office that becomes immediately enforceable. Any agreement reached through mediation is binding on both parties and may be enforced as any other written agreement.
 - If mediation is unsuccessful, the parties may proceed to court with a letter from the Division or apply to the referee program for final decision.

Completing the Claim Form

- The last page of Claim Form 520 contains a list of current mediators and referees to select from.
- Resumes of all mediators and referees can be found at <http://red.nv.gov/Content/CIC/ADR/Panel/>.
- 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 appointed by the Division.
- Once a mediator or referee is appointed, he/she will govern the process going forward.

Filing the Claim Form

- The claimant is required to file one original and two copies of the Claim Form with the Division.
- A \$50.00 filing fee payable to "NRED" either by check, money order or cash must be submitted. No cash should be sent in the mail. **This fee is non-refundable.**

After Filing the Claim with the Division

- The claimant will receive a packet from the Division by mail that must be **served on the respondent** as soon as possible.
- The package to serve will have a copy of:
 - Claim Form 520,
 - Overview Form 523,
 - Respondent Answer Form 521,
 - Subsidy Application for Mediation Form 668, and
 - An Affidavit of Service Form showing the required documents that must be served.
- A process server or any citizen over eighteen years of age, other than the claimant, may serve the respondent by leaving copies at the person's dwelling or delivering a copy to the agent authorized to receive service of process.
- If there 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.

Service Timeline

- Claim filed with Division on Form 520
- Respondent must be served with package
- Affidavit of service must be filed with the Division
- If respondent fails to file Form 521 with the Division, he/she loses the right to select a Mediator or Referee and risks having the case closed and going directly to court.



Within 45 days



Within 10 days

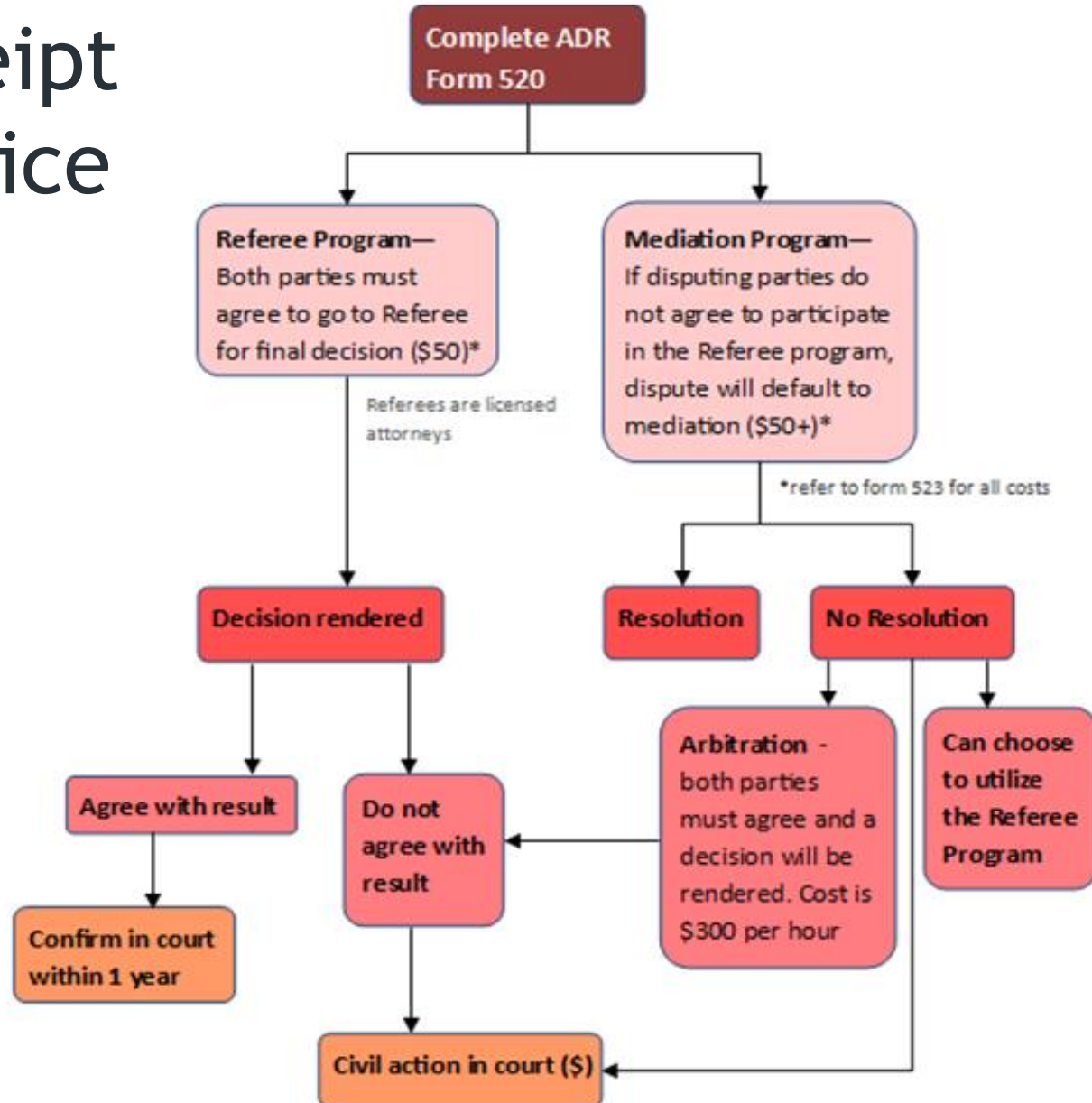
Respondent

- 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 service, and **must mail a copy to the claimant.**
- Respondents should provide a brief statement of their defense regarding the allegations.
- Lastly, a \$50.00 filing fee payable to "NRED" either by check, money order or cash must be provided at the time of filing. **This fee is non-refundable.**

Subsidy

- **Both parties** must submit **Form 668**, Subsidy Application, 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 parties choose to extend the mediation (past 3 hours), it will be at a cost to them of \$200 per hour.
- To receive a subsidy:
 - **unit owners** may apply only 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.
- 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.

Upon Receipt by our Office



Quiz - Which Process Should You Use?

- Water is leaking inside your condo from the ceiling/roof of your unit. You let the association know and they claim that it is not their responsibility. You believe otherwise. Which form should you file?

ADR due to interpretation of governing documents

- You requested from the association minutes from a meeting that took place months ago. It has been over 30 days and no minutes have been provided. Which form should you file?

IA for a NRS 116 violation

- Eight years ago you submitted an ARC Request to have shutters installed on your windows and were approved. Just last month, you received a notice from the association stating that you are not in compliance with the aesthetics of the community. You do not want to remove your shutters, which form should you file?

ADR due to interpretation of governing documents

Summary

- When filing a complaint:
 - If there are perceived violations of:
 - **NRS 116** – submit an Intervention Affidavit (IA)
 - **Interpretation of the Governing Documents** – submit for Alternative Dispute Resolution (ADR)
 - Be prepared to cite specific provisions that have been violated and how.
 - Have an option to cure.
 - A written affidavit filed with the Division and all information compiled as a result of an investigation are *confidential*.
 - The Division shall not disclose any information that is confidential to any person, including a person who is the subject of an investigation or complaint, unless and until it is filed with the Commission (NRS 116.757).

Thank You

- <http://red.nv.gov/> - Main Page
- CICOmbudsman@red.nv.gov - Email Questions
- http://red.nv.gov/Content/CIC/Program_Training/