

ALTERNATIVE DISPUTE RESOLUTION (ADR) PROCESS OVERVIEW
Please read the entire overview before submitting
Claim Form (#520) or Respondent Form (#521).

The ADR process is required under Nevada Revised Statutes (NRS) 38.300 to 38.360, before parties may file a civil action in court. The ADR process is available to all unit owners even if they have no intention of filing civil action in court. The regulations for NRS 38 are found in the Nevada Administrative Code (NAC) 38. Parties with a dispute involving the governing documents of their common-interest community must either participate in the Division's referee program or mediation prior to going to court. Aside from a \$50 filing fee, the referee program is a free service offered by the Division to the extent funding is available. Parties to a referee proceeding must agree to participate.

If the referee program is not agreed to by both parties, the dispute will be mediated. If the dispute is not resolved by mediation, parties that initially participated in mediation may agree to have the issue arbitrated or they may proceed to civil court. Arbitration may be binding or non-binding. If the referee program is utilized, the referee will issue a decision. The referee's decision is enforceable if the decision is confirmed by a court.

Please be advised, pursuant to Nevada Administrative Code (NAC) 116.630, by filing an ADR claim, the Division will not move forward with investigating an intervention affidavit filed based on the same or similar issues.

MATTERS SUBJECT TO ADR

NRS 38.310 provides that the following matters must go through the ADR process:

- The interpretation, application or enforcement of any covenants, conditions or restrictions (CC&R's) or any other governing documents applicable to residential property; or
- The procedure used for increasing, decreasing or imposing additional assessments upon residential property.

Claims for injunctive relief where there is an immediate threat of irreparable harm and actions relating to the title of residential property are not required to participate in the ADR process and can proceed directly to court. ADR does not apply to civil disputes between owners, or between owners and their association that do not involve the governing documents or the process used to set the amount of the periodic assessments paid by unit's owners. For example, if an owner cuts down a neighbor's tree, the dispute does not involve the governing documents or assessment issues and is, therefore, not subject to ADR.

If a civil action is filed between a homeowner and an association concerning governing documents or an assessment dispute before the ADR process has been completed, the court may dismiss that case without taking any action. Any applicable statute of limitations that has not expired before filing an ADR claim is suspended until the conclusion of the ADR process.

ADR PROGRAMS

- **THE REFEREE PROGRAM** – The referee program is a free program, administered by the Real Estate Division to the extent funds are available. Referees are licensed attorneys approved by the Division to hear disputes. The referee assigned to a claim will schedule a hearing for the parties to present their evidence. The referee will ask the parties to provide documentation, if any, to support their positions. Documents must be provided no less than 5 days before the hearing or as requested by the referee. All documents must be sent directly to the referee and simultaneously mailed to the opposing party. Do not send documents to the Division. At the hearing, parties may present evidence, including without limitation, witness testimony. The referee governs the procedures used during the hearing, including what evidence may be considered. The referee may ask questions of the parties and the witnesses.

The parties may agree to waive the hearing and elect instead to submit written statements describing the issue and their positions. The referee will review the claim, the response and the supporting documentation, including the association's governing documents. He/she will then issue a written decision. The referee's decision will be provided to the parties and the Division within 30 days of the hearing or 30 days after the referee receives all documents from the parties. After receiving the referee's decision, the parties have 60 days to file a claim with the appropriate court. If neither party files a claim, the referee's decision can be confirmed in court by either party within one year. Confirmation makes the decision an order of the court and is binding on both parties. If a monetary award is granted, it may not exceed \$7,500 and may not include attorneys' fees and costs. Note that claims involving multiple parties cannot participate in the referee program.

- **MEDIATION** – If the disputing parties do not agree to participate in the referee program, they must go through mediation prior to court. Mediators are certified and approved by the Division to mediate disputes. The parties meet with a mediator for up to 3 hours or longer if agreed to by the parties. The mediator promotes reconciliation, agreement, and compromise. If mediation is successful, the parties sign a written agreement, which becomes enforceable between the parties. A copy of the mediation agreement is provided to both parties. The Division does not receive a copy. If the mediation is unsuccessful the parties may proceed to court, agree to arbitration or apply to the referee program.
 - Mediation of a claim must be conducted in accordance with the provisions of NRS 38.300 to 38.360 inclusive. The mediation must be concluded within 60 days of the date the claim is filed with the Division, unless the parties agree otherwise. To complete the process in 60 days, claimants must serve the respondent as soon as possible since the respondent has 30 days to answer the claim. The mediator will contact the parties to schedule a date for the mediation.
 - The mediation may be held at the mediator's office, or other suitable location. The disputing parties must submit a statement to the mediator no later than five (5) days before the mediation. The statement must describe the issues and a proposed

compromise to the dispute. The mediator will not share that information with the opposing party. Any documents provided to the mediator are confidential and need not be provided to the Division. Supporting documentation should not be provided with the *Claim Form* (#520) or the *Respondent Form* (#521).

- If the parties agree to a resolution of the claim, a document detailing the resolution will be drafted by the mediator and signed by both parties before leaving the office. The settlement agreement is binding on the parties and can be enforced in court.
- If the parties do not agree to a resolution of the claim, either party may file a claim in the appropriate court stating that they have complied with the requirements of NRS 38.300, et seq. If the parties so desire, they may participate in arbitration or the referee program through the Division after an unsuccessful mediation.

MEDIATION SUBSIDY (NAC 116.520): Mediators may charge up to \$167.00 per hour, up to \$500.00 per claim. The Mediation may be subsidized up to \$250.00 per party, not to exceed \$500 per mediation. The parties must submit a *Subsidy Application for Mediation* (#668) at the time of filing a *Claim Form* (#520) or a *Response Form* (#521) with the Division. Unit owners may receive a subsidy once during each fiscal year of the State for each unit owned. An association may receive one subsidy each fiscal year against the same unit owner for each unit owned by that unit owner. Associations must be in good standing with the Secretary of State and the Office of the Ombudsman. The claimant requesting subsidy must file the claim for mediation within 1 year of discovery of the alleged violation. The State's fiscal year is from July 1 through June 30. If you have questions about your eligibility, please contact the ADR Facilitator.

- **Arbitration** – After participating in mediation or the referee program, the parties may elect to have the claim arbitrated. Arbitrator fees are limited to \$300 per hour; however, there is no time limit or maximum allowable billing for arbitration. Both parties must agree to arbitrate. Arbitration may be binding or non-binding.

FEES DUE TO THE MEDIATOR / ARBITRATOR

- Mediators may charge up to \$167 per hour, not to exceed \$500 for three-hour mediation. The parties to the mediation may agree to extend the mediation at a cost of \$200 for each hour. Mediators may require a deposit from both parties before proceedings begin. Each side pays half of the total amount. Mediators will refund, within 30 days, any amount that exceeds the allowable rate. Any outstanding amount due to the mediator must be paid within 10 days from the date of the mediation.
- Arbitrators may not bill more than \$300 per hour; however, there is no maximum number of allowable hours. Arbitrators may require a deposit from both parties.

SUBMITTING A CLAIM FOR MEDIATION OR REFEREE PROGRAM

- **Fill out Claim Form (#520) completely.** This form is located on our website at www.red.state.nv.us. The person making the claim is the “Claimant.” The person or entity with whom you have a dispute is the “Respondent.” If there are additional Respondents, list them on the *Additional Respondent Form* (#520B). Provide a brief statement of the facts giving rise to the dispute and the relevant provisions of the

governing documents at issue. Unless the parties agree to use the referee program, mediation is the required form of resolution before proceeding to court. The Real Estate Division's referee program may be utilized if both parties agree and the claim does not involve multiple parties. The claim form allows you to select either mediation or the referee program. If the Claimant selects the referee program but the Respondent does not agree, the claim will proceed to mediation. You are required to file the original and two (2) copies of the Claim Form (#520 and 520B, if applicable). Lastly, a \$50.00 filing fee payable to "NRED" either by check, money order or cash. Do not send cash in the mail. **This fee is not refundable.**

- **Mediation Subsidy.** If the claimant wishes to apply for subsidy of the mediation, include with your *Claim Form* (#520) the *Subsidy Application for Mediation* (#668).
- **Serve the Respondent.** After your claim has been filed, you will receive a packet from the Division by mail that must be **served on the Respondent as soon as possible**. You may not serve the Respondent yourself. (See **Filing and Serving the Claim** below for instructions). The package to serve will have a copy of your Claim Form (#520), a copy of this *Overview Form* (#523) and Form 520B, if applicable, a blank *Respondent Answer Form* (#521), a *Subsidy Application for Mediation* (#668), and an *Affidavit of Service* form.
- **Respondent's Response.** Respondents must review all documents served upon them, which shall include this *Overview* (#523), the *Claim Form* (#520), Forms 520A and B, if there are additional claimants or respondents to supplement the Claim Form, a blank *Respondent Form* (#521), and a *Subsidy Application for Mediation* (#668). Respondents are required to file with the Division a completed *Respondent Form* (#521) within 30 days after service **and mail a copy to the Claimant**. Respondents should provide a brief statement of his/her defense to the allegations made by Claimant. Respondents shall file the original *Respondent Form* (#521) and one (1) copy to the Division. Lastly, a \$50.00 filing fee payable to "NRED" either by check, money order or cash must be provided at the time of filing. Do not send cash in the mail. **This fee is not refundable.**
- **Selection of the Referee/Mediator.** The last page of the *Claim Form* (#520) contains a list of the current mediators and referees. Claimants are to select one of the names listed. Claimants and Respondents may view the resumes of all mediators and referees on the Division's website at www.red.state.nv.us/cic/cic.htm prior to making a selection. Respondent will state on the *Respondent 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.

SERVING THE CLAIM

Per NRS 38.320(3), the Claimant must serve the claim, in the manner described under Nevada Rules of Civil Procedure 4, with a blank *Respondent Form*, a copy of this *Overview* (#523), a copy of the *Claim Form* (#520), and subsidy information as soon as possible after filing the claim with the Division. The Division will provide an *Affidavit of Service* form showing the required documents that must be served. The *Affidavit of Service* form must be completed by the person who served the respondent, notarized, and **provided to the Division**.

If there are multiple respondents, each respondent must be separately served with the set of documents described above and a separate *Affidavit of Service* must be filed for each individual respondent.

Who may serve required documents? The sheriff of the county where the respondent resides or any citizen of the United States over eighteen (18) years of age other than the claimant or the respondent may provide service. A process server can also be used.

How service must be made:

- **Service on a Nevada Corporation:** Service shall be made upon the president or other corporate head, secretary, cashier, managing agent or resident agent. However, if this is not possible, then upon the Secretary of State in the manner described in Rule 4 of the Nevada Rules of Civil Procedure.
- **Service on a Non-Nevada Corporation:** Service shall be made upon the agent designated for service of process, in Nevada, or its managing agent, business agent, cashier, or secretary within this State. However, if this is not possible, then upon the Secretary of State in the manner described in Rule 4 of the Nevada Rules of Civil Procedure.
- **In all other cases (except service upon a person of unsound mind, or upon a city, town or county):** Service shall be made upon the respondent personally, or by leaving copies at his dwelling house or usual place of abode with some person of suitable age and discretion then residing therein, or by delivering a copy of the summons and complaint to an agent authorized by appointment or by law to receive service of process.
- **If all of the above are not possible because of the absence from the state or inability to locate the respondent: An Affidavit of Due Diligence can be provided to the Division. If the Division determines adequate efforts were made to serve the respondent(s), the Division will provide a letter to the claimants acknowledging their unsuccessful efforts to participate in the ADR program.**

COMPLETION OF THE PROCESS

The Division will issue written notification certifying that the claim has been submitted to a referee, mediator, or arbitrator within 30 days after receiving a copy of:

- (a) A statement from the mediator that the mediation was unsuccessful;
- (b) The decision from the referee or;
- (c) The decision from the arbitrator.

**ENFORCEMENT OF MEDIATION AGREEMENT,
REFEREE DECISION OR ARBITRATION AWARD**

- **Referee Decision:** After receiving the decision of the Referee, the parties have 60 days to commence a civil action with the appropriate court. If neither party commences a civil action, the referee's decision can be confirmed by a court at the request of any party within 1 year of the decision. Confirmation of the decision makes it an order of the court and a judgment binding on the parties. A decision of the referee is non-binding on the parties until it is confirmed by a court.

- **Mediation:** An agreement reached through mediation is binding on both parties and may be enforced as any other written agreement. Should an agreement not be reached through mediation, the parties may start a civil action in court, or apply to the referee program.
- **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 one year after service of the award, 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.

CAUTION: Failure to apply to the court for confirmation of a referee or arbitration decision within the time specified makes the decision non-binding and unenforceable by the parties.

ASSISTANCE AVAILABLE FROM THE DIVISION

Division staff can assist the parties in understanding the process and forms used in ADR. The Division cannot provide legal advice or determine whether or not the governing documents have been violated, or the enforceability of a specific provision. The staff facilitates the process. The Division does not employ or otherwise control the performance of the work by the mediators, referees or arbitrators. The Division is not responsible for, and does not endorse, any conduct by any mediator, referee, arbitrator or party. The Division has no stake in the outcome of any dispute. All fees and charges billed by the mediators and arbitrators are due and payable directly to the billing party. The mediator or arbitrator may request a deposit prior to the start of the mediation or proceeding. 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 or arbitrator.

Please direct questions to the Division's ADR Facilitator at:

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