

ALTERNATIVE DISPUTE RESOLUTION (ADR) NRS 38.300-.360

NRS 38.310 Limitations on commencement of certain civil actions.

1. No civil action based upon a claim relating to:

(a) The interpretation, application or enforcement of any covenants, conditions or restrictions applicable to residential property or any bylaws, rules or regulations adopted by an association; 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 a program pursuant to the provisions of [NRS 38.300](#) to [38.360](#), inclusive, and, if the civil action concerns real estate within a planned community subject to the provisions of [chapter 116](#) of NRS or real estate within a condominium hotel subject to the provisions of [chapter 116B](#) of NRS, all administrative procedures specified in any covenants, conditions or restrictions applicable to the property or in any bylaws, rules and regulations of an association have been exhausted.

2. A court shall dismiss any civil action which is commenced in violation of the provisions of subsection 1.

• What Is ADR

- NRED administers Alternative Dispute Resolution (ADR) for disputes involving the governing documents or the increase, decrease, or imposition of additional assessments upon residential communities in HOAs in Nevada
- A mandatory prerequisite before filing certain HOA related civil actions

• Who Must Use It

- Unit owners
- HOA boards
- Declarants

• When ADR Is Required

- Most disputes involving:
 - Governing documents (CC&Rs, bylaws, rules)
 - Board authority or enforcement
 - Fines, assessments or use restrictions

• Types of ADR Used

- **Mediation**
 - Neutral third person helps parties reach a voluntary agreement
- **Referee**
 - Neutral third person issues a decision
- **Arbitration**
 - Neutral third person issues a decision
 - May be binding or non-binding
 - May be used after unsuccessful mediation

• Role of NRED / Ombudsman

- NRED's Ombudsman oversees the ADR process
- Ensures compliance with statutes
- Does not represent either party

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- **Voluntary vs. Mandatory**
 - Participation before filing in court is required for covered disputes
 - Settlement itself is voluntary; arbitration is a separate dispute resolution process that may result in a binding determination
- **Costs**
 - Any cost not covered by subsidy, the parties bear the responsibility for such costs
 - Less expensive than litigation
- **Outcomes**
 - Settlement agreement
 - Referee's decision
 - Arbitrator's decision
 - Issuance of an ADR certificate permitting the claim to proceed to court if not resolved
- **Goal**
 - Efficiency and cost reduction
 - Reduce court congestion
 - Encourage faster, cooperative resolution
 - Preserve community relationships within HOAs

ADR: Mediation vs. Arbitration Comparison

Mediation

- Mandatory first step
- Neutral mediator
- Mediator facilitates discussion
- Parties create the resolution
- Voluntary settlement
- Informal process
- Faster and less formal
- If unresolved → arbitration or court
- Settlement agreement
- ADR certificate issued
- Statute of Limitation Tolled

Arbitration

- Mandatory first step
- Neutral arbitrator
- Arbitrator conducts a hearing
- Arbitrator renders a final decision
- Binding or nonbinding decision rendered
- More formal process
- More structured
- If nonbinding → court
- Written arbitration award
- ADR certificate issued
- Statute of Limitation Tolled

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NRED's Current Default Process vs. Proposed Default Process

Mediation - Current

- Mediation, Referee, & Arbitration
- Legal licensure is not required
- Default - Mediation
- Process - Mediation
- \$50.00 filing fee
- Nevada Rules of Civil Procedure 4
- Parties mutually select mediator
- Cannot agree - NRED appoint
- 3-hour process
- Subsidy - \$250/\$500 (discontinued)
- Amount not subsidized/\$200 per hour
- Successful - Reduced to writing/20 days
- Notifies NRED successful/unsuccessful
- NRED certificate of completion
- Unsuccessful – court or arbitration can be used
- Statute of Limitation Tolloed

Arbitration - Proposed

- Mediation & Arbitration
- Legal licensure is required
- Default - Arbitration
- Process - Non-binding or binding Arbitration
- \$50.00 filing fee
- Nevada Rules of Civil Procedure 4
- Parties mutually select arbitrator
- Cannot agree - NRED appoint
- 5-hour process
- Subsidy - To be determined (provided)
- Amount not subsidized/\$300 per hour
- Decision/award within 30 days
- Copy of award to NRED
- NRED certificate of completion
- File in court 30 days of the decision; court confirmation within 1 year
- Statute of Limitation Tolloed