



**STATE OF NEVADA  
DEPARTMENT OF BUSINESS AND INDUSTRY  
REAL ESTATE DIVISION**

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**RESIDENTIAL COMMON-INTEREST  
ALTERNATIVE DISPUTE RESOLUTION (ADR)  
Procedures for Mediating or Arbitrating Homeowner and Association Disputes**

**Overview of the New ADR Law**

The 1995 Legislature enacted AB 152, a scheme of mandatory alternative dispute resolution (“ADR”) between owners and homeowners associations concerning the interpretation, application and enforcement of Covenants, Conditions and Restrictions (CC&Rs), or any bylaws, rules or regulations adopted by an association (collectively called “the governing documents”) or procedures used for increasing, decreasing or imposing additional assessments upon residential property. Under the new law, no civil court action involving CC&Rs, bylaws, rules or regulations of an association, including or differing assessments (including fines), may be filed until ADR is complete. Any applicable statute of limitations which had not expired prior to the filing of a claim under this law is suspended until the conclusion of ADR under this law and the period (if applicable) for vacating an award has expired.

Further, if the applicable CC&Rs or rules of an association provide for a scheme of dispute resolution, that procedure must be exhausted before resort to this new statutory procedure for ADR.

This law also does not apply to actions in equity seeking injunctive relief in which there is an immediate threat of irreparable harm, or an action relating to the title to residential property. The law also does not apply to the collection of delinquent assessments, unless the issue in dispute is the increase by the association of existing assessments or imposition of different assessments.

Further, the law does not apply to civil disputes between owners or between owners and their association which do not involve questions arising under the governing documents; for example, if one owner is cutting down his neighbor’s trees or parking on his neighbor’s space, the case involves civil trespass and does not directly involve the CC&Rs.

In summary, if a dispute fits the Act, a court must dismiss any action brought before ADR is accomplished and the parties present a certificate of compliance with the Act.

**Choices for Alternative Dispute Resolution**

The new law allows disputing parties to chose one of three methods of alternative dispute resolution. All parties must agree in writing upon the method of alternative dispute resolution desired; however, if the parties cannot agree on mediation as the desired method, then the matter is referred to arbitration. Again, the parties must all agree to submit to binding arbitration, and if less than all parties agree, then the matter is referred to non-binding arbitration.

In all methods, if the parties do not all agree upon the mediator or arbitrator chosen by one or more of the parties, then the Real Estate Division will assign a qualified mediator or arbitrator to hear the matter.

The three available methods of alternative dispute resolution are described below:

**Mediation** - The parties meet with a trained mediator who intervenes to promote reconciliation, agreement or compromise. If mediation produces reconciliation, agreement or compromise, then it is reduced to a writing, which then becomes an enforceable agreement among the parties. Mediators, Mediation fees and costs may be less expensive than arbitration.

**Binding Arbitration** - The parties agree to present their respective case to a trained arbitrator who will render a decision that is final and binding upon the parties and is enforceable in the same manner as a civil judgment. The decision is not subject to a demand for a “trial de novo” (a new trial as if it had never been heard) and is only subject to being vacated as provided by statute upon grounds including fraud, corruption, bias and arbitrator misconduct in reaching the award, among other grounds specified in NRS 38.145.

**Nonbinding Arbitration** - The parties agree to present their respective cases to a trained arbitrator who will render a decision (called an “award”), which is subject to a demand by any party for a trial de-novo, upon the condition stated in NRS 38.109.

### **Lists of Mediators and Arbitrators Maintained by the Division**

The Division will develop and maintain lists of mediators and arbitrators who have training and experience both in mediation or arbitration and in specific areas of homeowner and association disputes, including but not limited to, the interpretation, application and enforcement of CC&Rs, articles of incorporation, bylaws, rules and regulations of an association, and who have demonstrated to the Division that they possess these qualifications. These lists will also include the fees charged by the mediator or arbitrator.

### **Filing and Serving the Claim**

Any party to a dispute covered by the new law may file a complaint called a “claim” with the Real Estate Division, Las Vegas office (address and phone number is printed on this form). Forms for the filing of claims must be used and are available from the Division. The claimant must pay a filing fee of \$50.00.

The claimant must serve the claim and a copy of this document explaining the procedures for ADR upon all parties to the dispute, along with a form for the response of the parties served. Service must be made in the manner described later under title, “Service of the Claim and Respondent’s Package by Nevada Rules of Civil Procedure, Rule 4.” The claimant must complete service upon all parties within 45 days of the filing of the claim with the Division.

### **Response by Parties Served with a Claim**

All parties served with a claim are “respondents”. Respondents must respond within 30 days after the date of service by filing a written answer on the forms provided by Division and served by the claimant with the claim. A filing fee of \$50 must accompany each answer. Each respondent must indicate on his/her/its answer, the selection of method of ADR.

### **Selection or Appointment of Mediator or Arbitrator**

If all parties select mediation, they shall select a mediator from a list of mediators in the geographic area (within 150 miles from any residential property or association that is the subject of the claim) (“the area”) maintained by the Division. If all parties cannot agree on the selection, then the Division will appoint a mediator within the area, and the parties so notified. The parties are responsible for all costs of mediation.

If all parties do not agree to mediation, the parties shall select an arbitrator from the list of arbitrators in the area maintained by the Division. If the parties cannot agree on the selection, the Division will appoint an arbitrator available in the area, and will so notify the parties. Except as may be allocated in the case of a trial de novo, discussed below, the parties are responsible for all costs of arbitration.

### **Case Preparation and Discovery**

In binding and non-binding arbitration, but not in mediation, the parties may obtain from the arbitrator subpoenas to require each other to produce documents and witnesses at the hearing before the arbitrator or the arbitrator may permit depositions to be taken of witnesses who cannot be subpoenaed to attend. This power to require the attendance of witnesses or production of documents is not available to mediators.

### **Scheduling of Mediation or Arbitration**

Unless otherwise agreed by the parties, mediation or arbitration must be scheduled and completed within 90 days after the response of all parties agreeing to mediation or the assignment of the case to arbitration and the selection or appointment of a mediator or arbitrator.

### **Rules Governing Conduct of Arbitration**

Non-binding arbitration of a claim must be conducted in accordance with the provisions of NRS 38.075 to 38.105, inclusive, 38.115 to 38.135, inclusive, 38.155 and 38.165.

Binding arbitration of a claim must be conducted in accordance with the provisions of Chapter 38 of NRS.

### **Scheduling of the Rendition of a Written Mediated Agreement or Arbitrator’s Award**

Any agreement reached through mediation must be reduced to writing by the mediator and served upon all parties by mail within 30 days after the conclusion of the mediation.

The award of the arbitrator must be completed and served upon the parties within 90 days after conclusion of the arbitration, unless the parties agree on a shorter time.

### **Timing and Procedure to Vacate or Confirm Award or to Request Trial de Novo**

An agreement reached through **mediation** may be enforced as any other written agreement.

If the parties have concluded **nonbinding arbitration**, any party may, within 30 days after the award has been served upon the parties, commence a civil action in the proper court concerning the claim that was submitted for arbitration. Any complaint filed in such an action must contain a sworn statement indicating that the issues addressed in the complaint have been arbitrated pursuant to the provisions of this law.

If no civil action is timely commenced, then any party may, within 1 year of service of the award, apply to the proper court for a confirmation of the award pursuant to NRS 38.135.

If the parties have concluded **binding arbitration**, an award may be vacated and a rehearing granted upon application of a party pursuant to the provisions of NRS 38.145.

### **Liability for Costs and Attorney's Fees after Rehearing or Civil Action**

If, after the conclusion of arbitration, a party (a) applies to have an award vacated and a rehearing granted pursuant to NRS 38.145 or (b) commences a civil action based upon any claim which was the subject of arbitration, the party shall, if he fails to obtain a more favorable award or judgment than that which was obtained in the initial arbitration, pay all costs and reasonable attorney's fees incurred by the opposing party(ies) after the application for a rehearing was made or after the complaint in the civil action was filed.

### **Enforcement of arbitration Award**

*NONBINDING ARBITRATION AWARD:* If neither party to an arbitration award commences a civil action in court within 30 days after service of the award, either party may, within one (1) year after service of the award, apply to the court for a confirmation of the award pursuant to NRS 38.135. See NRS 38.330(4). Upon granting an order confirming the arbitration award, the court will enter judgment, which the succeeding party may then enforce as any other judgment or decree. NRS 38.165.

*BINDING ARBITRATION AWARD:* If neither party to an arbitration award moves to vacate the award within 90 days after the service of the award, either party may, within one (1) year after service of the award, apply to the court for a confirmation of the award pursuant to NRS 38.135. See NRS 38.330(4). Upon granting an order confirming the arbitration award, the court will enter judgment, which the succeeding party may then enforce as any other judgment or decree. NRS 38.165.

**WARNING:** Failure to timely apply for confirmation may prevent the party from otherwise enforcing the arbitration award.

**SERVICE OF THE CLAIM AND RESPONDENT'S PACKAGE BY NEVADA RULES OF CIVIL PROCEDURE (NCRP), RULE 4**

***What must be served*** - The Claim, the Division's explanatory materials and Respondent's Form must be served together.

***Who may serve required documents*** - The sheriff of the county where the respondent is found, or by any citizen of the United States over 18 years of age who is not a claimant or respondent.

***How service must be made:***

**If upon a Nevada corporation:** service shall be made upon the president, secretary, 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.

**If upon a non-Nevada corporation, partnership, or other entity:** to the agent for service of process, or its managing agent, business agent, 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.

**If upon a minor:** service shall be upon the minor under the age of 14 and also to his father, mother or guardian or if there is none within this state, then to any person having the care or control of said minor, or with whom he resides, or in whose service he is employed.

**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 there, 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 concealment of the respondent:** application to a court for an order of publication in the manner provided in NCRP Rule 4 shall be made.

**QUESTIONS REGARDING COMPLIANCE WITH MANDATORY ADR.**

Division staff will assist the parties to understand the procedures and forms to be utilized in the accomplishment of dispute resolution through mediation or arbitration.

However, the Division cannot give any party legal advice, nor advise any person regarding whether or not any provision of an association's governing documents has or has not been violated or whether any provision is enforceable or any such information.

**MEDIATORS AND ARBITRATORS ARE INDEPENDENT CONTRACTORS**

All parties should understand that the Division does not employ or otherwise control the performance of the work by mediators or arbitrators. The Division is not responsible for or otherwise endorsing any conduct by any mediator or arbitrator or any party and has no stake in the outcome of any dispute. All fees and charges of mediators or arbitrators are due and payable directly to the mediator or arbitrator. The Division has no responsibility to regulate the fees or charges or to collect any sums payable to a mediator or arbitrator.

### ***Regulations for Implementation of AB 152***

Claimant must complete service of the claim, explanatory materials and respondent's form within 45 days of filing the claim with the Division. Proof of service must be filed with the Division within 10 days of the service of claim, on forms to be provided by the Division.

Unless otherwise agreed by the parties, mediation or arbitration must be scheduled and completed within 90 days after the response of all parties agreeing to mediation and the selection or appointment of a mediator, or within 90 days of the assignment of the case to arbitration and the selection or appointment of an arbitrator.

The mediated agreement reached by the parties to mediation must be served upon all parties and the Division within 30 days of the conclusion of mediation.

The award of the arbitrator must be served upon the parties and the Division within 90 days of the conclusion of the arbitration.

Upon the conclusion of mediation or arbitration, the Division will issue a certificate to the parties certifying that they have completed the alternative dispute resolution process as required by this law.