



Kentwood Home Guardians

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ANNUAL ALTERNATIVE DISPUTE RESOLUTION NOTICE

(per Civil Code §5965)

Kentwood Home Guardians (“KHG”) is providing this Notice to provide information to its members about requirements that Alternative Dispute Resolution (“ADR”) is generally required prior to commencing litigation in superior court.

FAILURE OF A KHG MEMBER TO COMPLY WITH THE ALTERNATIVE DISPUTE RESOLUTION REQUIREMENTS OF CIVIL CODE §5930 MAY RESULT IN THE LOSS OF THAT MEMBER’S RIGHT TO SUE KHG OR ANOTHER KHG MEMBER REGARDING ENFORCEMENT OF KHG’S GOVERNING DOCUMENTS OR THE APPLICABLE LAW.

Civil Code §5930 provides that before either KHG or a KHG member can file a lawsuit for Declaratory Relief or Injunctive Relief, either exclusively or in conjunction with a claim for Monetary Damages not to exceed jurisdictional limits (other than for assessments), the parties shall (with a few stated exceptions) submit the matter to Alternative Dispute Resolution (“ADR”) prior to filing the lawsuit.

ADR is either submitting the claim to mediation or arbitration. In mediation, a mediator tries to resolve the differences between the parties and tries to get them to agree to compromise. Arbitration is the process whereby an arbitrator, usually a retired judge or a lawyer or somebody with a special expertise in a particular field, listens to both sides of the case and makes a decision in the same manner as if a judge would in court. Mediation and arbitration are non-binding under Civil Code §5930, although the parties may agree to make it binding.

To submit a dispute to ADR, the claimant must serve the other party with a Request for Resolution (the “Request”) which briefly describes the dispute, requests that the dispute be submitted to ADR and notifies the other party that they must respond within thirty (30) days of receipt of the Request, or it will be deemed rejected. If the other party accepts the Request, the parties may mutually decide which form of ADR (mediation or arbitration) they wish to submit the dispute to, and whether it will be binding or non-binding. If accepted, the ADR must be completed within ninety (90) days of receipt of acceptance of the Request, unless extended by the parties. The parties share the costs of ADR.

Anything said in the course of ADR, or any documents prepared or admissions made in the course of the ADR, are inadmissible in any civil action in which testimony can be compelled, unless consented to by both parties.



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Civil Code §5930 requires that at the time a lawsuit is filed, a certificate must also be filed certifying that ADR has been completed or that one of the following exceptions applies:

1. The statute of limitations for bringing the civil action would run within the 120 day timeframe contemplated by ADR (thus barring the civil action);
2. The other party who received the Request refused to submit the dispute to ADR prior to filing of the complaint.
3. The court finds that dismissal of the civil action for failure to file the certificate would result in substantial prejudice to one of the parties; or
4. The court finds that Preliminary or Temporary Injunctive Relief is necessary.

Failure to file the required certificate, unless one or more of the exceptions apply, would make the lawsuit subject to dismissal.

This section would also allow a court to stay a pending action and refer it to ADR upon stipulation of the parties.

Generally, in an action for Declaratory Relief or Injunctive Relief related to enforcement of governing documents of an Association, the prevailing party would be entitled to an award of attorney's fees and costs. However, if that prevailing party were offered an opportunity to submit the dispute to ADR and refused to do so, the court could take this into consideration in making such an award of the attorney's fees and costs.

Failure of a KHG member to comply with the ADR requirements of Civil Code §5930 may result in the loss of the member's rights to sue KHG or another member of KHG regarding enforcement of KHG's governing documents.