

GUIDE FOR SAMPLE COMMON INTEREST COMMUNITY ASSOCIATION DISPUTE RESOLUTION POLICY

The Sample Common Interest Community Association Dispute Resolution Policy (“Sample Policy”) is a sample of a policy that your Common Interest Community Association (“Association”) may choose to adopt to comply with the CRS §38-33.3-124. That statute, effective January 1, 2007, encourages common interest communities

to adopt protocols that make use of mediation or arbitration as alternatives to, or preconditions upon, the filing of a complaint between a unit owner and association in situations that do not involve an imminent threat to the peace, health or safety of the community.

It also requires each Association

to adopt a written policy setting forth its procedure for addressing disputes arising between the Association and unit owners.

An Association may choose to adopt any part or all of the Sample Policy. The Sample Policy suggests procedures for resolution of disputes between the Association and unit owners, and optionally, also for disputes between unit owners. The standard policies suggested in the sample are negotiation and mediation. Binding Arbitration is suggested as an optional additional procedure or as an alternative to mediation.

Issues the Association should consider in designing the appropriate policy include:

1. Whether the dispute resolution policy should apply to disputes between unit owners in addition to disputes between the Association and unit owners.
2. Which ADR options will be included and whether the processes will be sequential or not.
3. If arbitration is desirable, whether arbitration will be binding or non-binding.
4. If arbitration is desirable, whether the arbitrator shall be required to award attorneys fees and costs to the prevailing party or, as provided in Paragraph 4 of the Sample Policy, whether the arbitrator retains discretion to award attorneys fees and costs.
5. What timelines the Association wants to include in the policy (the number of days between events).
6. How to select a mediator and/or arbitrator. (A list of Professional Mediators is available at www.coloradomediation.org)
7. What to do when the parties can't agree on selection of mediator and/or arbitrator. (Possible options might include: a) naming a specific ADR provider or ADR organization to provide services; b) letting one party suggest three names and the other choose one of the three; c) select an individual or organization such as an ADR professional organization or Community Associations Institute to appoint the provider; d) having one professional chosen by each party appoint the provider(s); or e) having providers chosen by each party, if willing, work together to provide ADR services.
8. Determine if there are any areas of dispute that the HOA wants to exclude from the policy.
9. Determine what procedures are required for adoption of the policy.