



State of New Jersey
DEPARTMENT OF COMMUNITY AFFAIRS
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PHILIP D. MURPHY
Governor

LT. GOVERNOR SHEILA Y. OLIVER
Commissioner

Dear Homeowner:

You recently requested assistance regarding your association. The Association Regulation Unit in the Department of Community Affairs enforces provisions of the New Jersey Condominium Act and the Planned Real Estate Development Full Disclosure Act pertaining to the obligations of an association comprised of residential owners in the following three areas: that associations adopt and properly administer alternate dispute resolution procedures (ADR); comply with open public meeting requirements; and provide owners access to financial records at reasonable times. In order to more fully inform you regarding these areas, included are information sheets for each subject matter.

Please note that the Department of Community Affairs does not have the statutory authority to take actions such as investigating alleged wrongdoings of board members or employees, removing board members from office, ordering board members or employees to comply with governing documents or to take or rescind specific actions. Similarly, we cannot order revisions to financial practices or operating procedures, conduct audits or review elections. Owners are empowered to correct such matters through ADR or litigation as well as by petitioning the board or electing new board members.

If you wish to make a formal complaint that your association is not in compliance with its obligations as described in this material, please complete the enclosed Common Interest Community Association Complaint form and return it, along with the appropriate supporting documentation, to the address on the complaint form.

We trust the information supplied will guide you accordingly.

Association Regulation Unit
Planned Real Estate Development

Enclosures



DCA ALTERNATIVE DISPUTE RESOLUTION GUIDE *

For owners in common interest communities

Both the New Jersey Condominium Act, N.J.S.A. 46:8B-1 et seq., and the Planned Real Estate Development Full Disclosure Act (PREDFDA), N.J.S.A. 45:22A-21 et seq., require associations to provide a “fair and efficient” alternative to litigation for unit owners to resolve "housing related" (meaning not personal but related directly to association living) disputes between one another or with the association. While formally called alternative dispute resolution, it is commonly referred to as ADR. The overwhelming majority of ADR matters are between owners and the board (technically the association) but it is applicable to association related disputes between owners. Unlike the board, which must participate if an ADR is requested for one of its actions or inactions, a unit owner cannot compel another unit owner to participate in an ADR proceeding. This does not mean an association cannot still provide an ADR for the one owner to explain his or her concern. If the ADR request concerns another's owner's action or inaction that violates a governing document or rule, the board should take action and advise the requesting owner that he or she may be requested to serve as a witness.

Section 15(f) of the Condominium Act requires condominium associations to provide written notice of the availability of ADR as a condition of issuing a fine. Although there is no specific requirement for this in the PREDFDA there is also no statutory right for non- condominium associations to issue fines. Because courts look to the Condominium Act for guidance even when dealing with non-condominiums, a homeowner's or a cooperative association that issues a fine, should also provide notice of a right to ADR. It is important to note that even if your association was formed prior to passage of either the Condominium Act (1969) or the PREDFDA (1977) New Jersey courts support an owner's right to ADR.

ADR procedures can be either mediation (attempting to work the matter out to mutual agreement) or arbitration (a more formal proceeding ending with a decision). An arbitration proceeding operates much like a trial in which witnesses testify and evidence is presented. Although there are individuals qualified as mediators and arbitrators, there is no requirement for any training or certification for one to serve as either a mediator or arbitrator in association ADR proceedings. Thus, the ADR can be conducted by other association owners. Whoever conducts the proceeding must not be biased or partial as measured by an objective standard. Because the board is the authority which must appoint the ADR provider, mere appointment is not evidence of partiality.

*Except as to matters specifically cited as being “the law”, this handout should not be referred to as “the law”

ADR is intended as an attempt to resolve disputes and is not necessarily binding on boards. Both owners and boards have the right to proceed in court in response to an unsatisfactory ADR outcome. This proceeding will be conducted as a new matter and not as an appeal. If the board fails to cooperate with a recommendation or arbitration decision against it, you must initiate a proceeding in court. In addition to not creating a record for an appeal, ADR is not a means to secure an order to stop a board from taking action or to force a board to act. These can only be secured through appropriate court proceedings. Similarly, ADR is not the means to obtain monetary damages against the association.

Although ADR is applied broadly, in recognition of the intent that it be a means to avoid litigation, matters within a board's legitimate discretion are not subject to ADR because a court will not substitute its judgment in such matters. Owners can address disagreement on matters in which boards properly exercise discretion through the democratic process (petitions, elections, etc. which convey the will of the community). These issues are distinguishable from violations of governing documents or other legal requirements which can be reviewed objectively and on which a court can rule. In ADR, as in a court, you should be prepared to refer to specific laws, portions of the governing documents or rules which you believe the board violated

There is no standard ADR procedure. Each association is authorized to design the ADR procedure which it feels best satisfies the needs of its owners. This agency has a sample procedure available to boards upon request. If an association procedure designates an outside mediators or arbitrators, it may simply refer the owner to the providers for their specific procedures. The one fundamental rule is that neither the board nor any of its agents or employees can be the ADR provider. Thus, neither the board nor any member can sit as or with the ADR panel. However, board members, agents or representatives can appear in the proceeding and present the board's position. While either party may proceed in court after an ADR, the board cannot appeal an ADR outcome to itself. Note that there is a State Office of Dispute Resolution in Newark which can provide ADR if requested by the association. While owners can suggest options, it is the association Board which has the authority and responsibility to determine the association's ADR procedure.

The New Jersey Department of Community Affairs, acting through the Association Regulation Unit has authority to require common interest communities to adopt an ADR procedure and to provide it when applicable. The agency does not provide the ADR nor can it address the substance of the dispute, modify outcomes or hear appeals. Please note, the law does

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not require that associations file their ADR procedures with the agency and there is no requirement to receive agency approval before instituting a procedure. However, if an owner believes the association's ADR procedure violates the statutory requirements, the agency will review it.

Because ADR is intended to be an informal proceeding, it is not necessary to secure legal representation. However, if you choose, you may be represented by a lawyer. If you choose to be represented by a lawyer, you are responsible for the cost of the representation. You can also choose someone to accompany you to the proceeding as well as bringing witnesses. In condominiums, any costs in providing ADR are common expenses pursuant to Section 14 of the Condominium Act. This is only applicable to the required ADR. If the association's ADR procedure provides for a second option, such as arbitration following mediation, it can charge a fee for that option. Common expenses are ones shared by all owners and not just split between the parties to the ADR. In other types of associations, there may be charges on the requesting party to cover or contribute to the costs of the required ADR. In such cases, there is no set limit on these charges. An owner who believes the charge is excessive can proceed in court.

Associations are required to have and provide an ADR procedure, if requested, as an opportunity to resolve disputes but owners are not mandated to pursue it prior to proceeding in court. Be advised that the court may send your matter back to the association for ADR if it believes there is a chance ADR will be helpful. The law strongly favors having ADR available to attempt to resolve matters without the necessity of a court action and it is broadly construed to apply to virtually all association related issues.

Those who believe they have discovered fraud, theft or other criminal conduct by a board and believe they have concrete evidence should bring the matter to the attention of the county prosecutor or other appropriate law enforcement agency. (If it relates to an association employee, depending on the nature of the conduct, an owner may wish to initially bring it to the board's attention). Please note also that this agency, prosecutors, including the State's Attorney General, do not act on owner complaints regarding allegations of board misconduct such as acting irresponsibility or contrary to the bylaws since these are private communities for which there is a remedy through a civil court proceeding.

While there is no formality prescribed to request ADR, you should request it in writing, addressed to the board, unless the procedure of your association provides otherwise. (Prior to requesting ADR it is advisable to request a copy of the association's procedure. This agency does not formally maintain copies of ADR procedures that may come to its attention.). You should do so even if you do not believe your association has a written ADR procedure or has one

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which you do not believe satisfies the “fair and efficient” criteria or is flawed in some other way. In your request, state the nature of your complaint clearly and specifically request that you be provided ADR. The request is not the means to make your case so you should not argue your case or supply supporting documents or evidence. Some association procedures encourage meeting with the board prior to participating in an ADR in order to resolve a matter. It is up to the individual to decide whether he or she finds that useful. In any event, it cannot be a pre-condition to receiving ADR.

The scheduling of an ADR proceeding should be mutually convenient and, if there is no appropriate room on common element property, the parties should cooperate in agreeing on a time and place. While it is preferable to conduct ADR on association property, often it is not possible in which case it should held on a neutral site unless both parties agree otherwise.

There is no set time for an association to respond to a request to participate in ADR. We recommend you wait a reasonable amount of time (at least 14 days) for a response from the board or its agent. In the event you are requesting it in response to an adverse association action against you, the association should suspend any penalty until the ADR is completed. Note that the association can establish a reasonable time limit within which you can request ADR. If you do not receive a response to a request for ADR, you may contact this office in writing by completing our association complaint form.

The Planned Real Estate Development Full Disclosure Act and the New Jersey Condominium Act are both available on line at www.njleg.state.nj.us (to obtain statute, scroll down on left side of page to “Laws and Constitution”, click on “Statutes”, either scroll down to the Title No. or enter full name of statute in search box) Any questions as to the functioning should be directed to njleg.

DCA OPEN MEETINGS GUIDE

For owners in common interest communities

All meetings at which a board takes a binding vote are required by law to be open to all owners and advance written notice of such meetings must be given as provided by law. The laws governing open meeting requirements in New Jersey's common interest communities can be found in the Planned Real Estate Development Full Disclosure Act (N.J.S.A. 45:22A-46a.) and the New Jersey Condominium Act (N.J.S.A. 46:8B-13(a)). The New Jersey Department of Community Affairs has promulgated regulations to assist in the implementation of these statutory requirements in Chapter 20 of Title 5 of the New Jersey Administrative Code (N.J.A.C. 5:20-1.1 et seq.).

Advance notice, in addition to being written, must be provided at least 48 hours in advance, giving the time, date, location, and to the extent known, the agenda of the meeting at which a binding vote will be taken. The notice shall be posted prominently in at least one place on the property that is accessible at all times to all unit owners and must be filed with the person responsible for administering the business office of the association.* Condominium association by-laws may prescribe additional or alternative methods of providing notice which provide a greater probability that unit owners will receive it. Mailings directly to owners, for example, are permitted, as is hand delivering a copy to each unit door. No notice need be given for board meetings at which no binding votes will be taken. Note that boards can meet without advance notice to deal with matters that would result in substantial harm were it to wait the 48 hours to provide advance notice. In such case, the board shall provide notice in the ordinarily required manner as soon as possible after the meeting.

Examples of actions that require open meetings are: the adoption of an annual budget, the certification of any elections, hiring or terminating an employee, enacting or changing a rule or entering into a contract. Governing boards may discuss specific matters in closed session, specifically those which involve an unwarranted invasion of individual privacy, pending

*Although the Regulation provides that an association shall also mail, telephone, or hand deliver a notice to at least two newspapers designated by the governing board or by the association to receive such notices, there is no necessity of publication. Due to difficulties of proof, this agency will not act on a complaint of failure to provide notice if the association complies with the other notice provisions. Additionally, an association which provides a meeting notice within 7 days of an annual meeting which contains the location, time and date of the coming year's meetings need not provide additional notice if there is no change.

OPEN MEETINGS

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litigation, contract negotiations, those falling within the attorney-client privilege, and those involving the employment, promotion, discipline or dismissal of an officer or employee of the association. It is important to note that, except as to certain litigation matters which require a case by case determination, although the discussion of these matters identified is confidential; the board's decision is to be made and recorded in an open meeting.

The board is required to take minutes of open meetings and make copies available to unit owners prior to the next open meeting. There is no standard this agency enforces as to the content of the minutes and owners should be aware that minutes are not transcriptions. Similarly, while some association bylaws may require that minutes be mailed to owners, there is no obligation this agency enforces requiring that this be done. Because the provision of minutes is an obligation, it is a common expense. This is only applicable to one copy per owner per meeting. Owners desiring multiple copies of the same meeting minutes may be required to pay the association for copying costs. There is no standard this agency enforces as to the length of time an association must keep minutes. If the association is formed as a non-profit corporation under Title 15A, owners can look to the general corporate standard. This agency does not have authority to enforce Title 15A.

Open Meeting requirements regarding board meetings (as opposed to general membership meetings) do not guarantee a right to participate, only to observe. Unless otherwise required in governing documents, participation is at the board's discretion.

The Association Regulation Unit of the New Jersey Department of Community Affairs has the authority to ensure that associations comply with the open meeting requirements as set forth in the law and regulation cited above. If you are aggrieved by the fact that your association is not adhering to these open meeting requirements, please submit the enclosed "Common Interest Community Association Complaint Form" along with the necessary supporting documentation, to the address listed on the form.

The Planned Real Estate Development Full Disclosure Act and the New Jersey Condominium Act are both available on line at www.njleg.state.nj.us. The N.J. Administrative Code can also be found on line at www.michie.com/NJ.

DCA ACCESS TO FINANCIAL RECORDS GUIDE*

For owners in Common Interest Communities

The New Jersey Condominium Act,(N.J.S.A. 46:8B-14(g), provides that associations shall be responsible for “the maintenance of accounting records in accordance with generally accepted accounting principles open to inspection by unit owners at reasonable times.” These accounting records shall include (1) a record of all receipts and expenditures; and (2) an account for each unit setting forth any shares of common expenses or other charges due, the due dates thereof, the present balance due, and any interest in common surplus. The Department of Community Affairs has authority to enforce this access right.

In order to maintain consistency, courts have held that the right of access granted to condominium owners applies to those in other types of associations such as cooperatives and homeowners associations. Part of the right of access is the right to make copies of records. Access to financial records under our jurisdiction is considered to be unconditional and thus may not be denied because an owner is not paid up in association fees or has any outstanding violations. Although an association may require an owner to sign an acknowledgement listing the records to which access was granted or of having received an information sheet on consequences for misuse, it cannot require owners to agree to any confidentiality as a precondition for access or copying.

Because this is a statutory right, the owner need not provide any justification for requesting access. For the same reason, there is no need for any Board vote regarding the granting of access. Owners should allow the association a reasonable time to comply with a request considering the factors involved such as; the size of the association, its resources, the number of records requested, the presence or absence of professional management, the number of other pending requests, the general workload and relevant circumstances. If the association denies access or unreasonably delays or conditions access, the Department, acting through the Association Regulation Unit, has the power to order compliance.

While the law we enforce does not require the association to send a requesting owner copies of the records, (as opposed to allowing access), your association governing documents may offer this option. If that is the case and the association does not comply, you may wish to consider requesting alternative dispute resolution (ADR, see other handout.) Note, the fact that an association may send out copies of financial documents like budgets or balance sheets does not affect its obligation to allow access.

The association must grant access without charge to the requesting individual (other than a proportionate share as an owner), even if another party charges the association a production fee. Although ideally the association will make records available on site, circumstances may require that an owner travel to an accountant’s or property manager’s office. Owners should check if the association keeps records in an electronic format. If it includes all records and copies of items such as actual bills and checks, that would be most convenient.

Owners can make their own copies on site if their method does no harm to the documents. In the event an owner wishes the association to make copies, the association can charge a fee. Fees must be reasonably related to the association’s copying cost and consistent with the owner’s right. An owner has the right to determine which records he or she would like copied. In the event there is an extensive list, it is common and not unreasonable for associations to require an advance payment. It is

*Except for matters specifically cited as “the law”, this handout should not be referred to by owners as “the law”.

permissible for an owner to bring a knowledgeable person with them such as an accountant or one familiar with corporate financial records. In order to maintain the integrity of the records, it is expected that an association will have a representative present during a review.

Owners should note that except for the records of receipts and expenditures and unit payment records, the law does not establish other specific accounting records as being required to be kept. And note that access is to “accounting records”, thus we cannot support an owner’s demand for analyses, internal financial reports or explanations of accounting terms or methodology. While there is general agreement on records constituting basic accounting records for an association, others may be subject to differing interpretation by financial authorities. Thus, each association, in consultation with its accountant, should identify which of its records are accounting records. If you have a basis for disagreeing with the classification, you may request alternative dispute resolution (ADR). If the association refuses to allow an owner access to basic information such as bank statements, ledgers, journals or bills that are clearly covered, you should complete our agency complaint form and file it with us. It is clear that supporting documents such as vendor or service bills as well as payments are included. And, although certain board proceedings, such as discussions on legal actions, may be confidential, the resulting attorney bills are not. Attorneys claiming bills contain privileged material can redact such information before allowing access.

The law allows unit owners to access unit owner records for other unit owners. Should such records contain legitimately confidential information, such as social security numbers or unlisted telephone numbers, that information can be redacted. Owners are permitted to see the payment record of their fellow owners much the same as municipal property tax records are open to the public. The discovery of payment arrearages without any lien or collection notations allows owners to inquire about steps the association is taking to protect itself financially. A review of overall payment records allows owners to determine their association’s financial health. The association’s financial situation and management are basic board election issues.

Prior to making an access request, it is useful to ask the association about the titles and contents of the financial records it keeps so that a request can be specific. Association responses to access requests vary widely. There may be certain restrictions as to the time and location where the records may be reviewed. Also, in the event a request is not specific as to the records requested or the years to which the request pertains; the association is free to provide access in the manner it wishes. There is no set time period in which the association must make records available. Thus, the default is a reasonable time considering all the circumstances.

Especially in larger associations, it is not productive to begin with overbroad requests. An owner desiring to access records covering a lengthy time frame, should make separate requests for specific periods. Unless precluded by governing documents, an owner may wish to make an informal oral request for access. If it is denied or ignored, one must make a written request to inspect records. If the governing documents are not specific as to whom the records request should be made; address the request to the governing board. The request should be made reasonably in advance of the desired review date and in accordance with any requirements in the association’s governing documents-provided they do not conflict with the owner’s legal rights. Be aware that current records may be in use by an accountant for tax preparation purposes.

Access to Financial Information

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If the association denies, or unduly restricts, access to accounting records, you can complete and submit the agency's complaint form, along with the appropriate supporting documentation to the address supplied on the form. We can only compel associations to provide access to records under their control. In situations where a prior board member or property manager refuses the association's request for the return of records, it is incumbent on the association to pursue their return. This agency cannot order that records be returned. Similarly, neither this nor any State agency has jurisdiction over the manner in which records are maintained. Although poor record storage or indexing may delay record access, they are not an excuse for denying access.

Owners should remember that boards are elected to exercise judgment in making financial decisions and a disagreement with how a board allocates or manages funds is an internal matter subject to change through an election. Should an owner believe that records reveal misappropriation or fraud, he or she may wish to ask for clarification from the board or provide the records to a personal accountant or attorney for review and guidance before bringing the matter to the attention of their county prosecutor. This agency has no jurisdiction over such matters.

The law does not mandate annual audits for owner controlled associations and this agency has no authority to mandate them. However, if your governing documents require them and the association fails to comply, you may wish to request to participate in an ADR procedure (see agency's ADR handout). If you are dissatisfied with an ADR outcome, you can seek a court order for an audit.

All New Jersey statutes are available online at www.njleg.state.nj.us. Once on the page, scroll down and on the left side look for the category, "Laws and Constitution", click on Statutes below that title and either scroll down to the appropriate Title number or type in the full name or citation in the search box. Any questions as to the functioning should be directed to njleg. Statutes are also available at county law libraries and often in municipal buildings. We do not provide copies of the Condominium Act or the Planned Real Estate Development Full Disclosure Act (N.J.S.A. 45:22A-21 et seq.).

Common Interest Community Association Complaint Form

Part One

Be sure to read the accompanying handouts regarding the agency's jurisdiction prior to completing this form.

This form has two parts, both parts must be submitted in accordance with the instructions or the complaint will not be processed.

Complainant Information

My name is _____

I am filing a complaint on behalf of _____
(unit owner name as it appears on association records)

Who owns unit _____ within the _____
(unit designation) (name of development, condominium or cooperative)

My relationship to the complainant is _____

My mailing address is _____

(city) (state) (zip)

Contact me during the day at this telephone number _____ or by email at _____

Signed by _____ on this date ____/____/____
(signature of unit owner)

Association Information

The association is (check one) ___ a condominium ___ a cooperative ___ a homeowners association

The name of the association is _____ There are ____ # of residential units within the development. This association is part of a master association called _____ (if there is no master enter N/A)

The development is located in _____ Town/City of _____ County

The mailing address of the association is _____

(street address and/or PO Box)

(city) (state) (zip)

The current president of the association is _____

Unit owners elect _____ (#) of the members of the board of directors which has a total of _____ (#) board members.

The association has employed _____ as the manager of the property.
(name of person and company name if applicable)

The property manager can be contacted at this telephone number _____

Common Interest Community Association Complaint Form
Part Two

Nature of Complaint

Please check those that apply without modification

_____ **The Association does not have an Alternative Dispute Resolution (ADR) procedure**

Prior to filing a complaint, did you request a copy of the ADR procedure in writing? Were you informed the procedures did not exist? Was your request ignored? If the answer to the first question is yes, and you were either advised that there is no procedure or your request was ignored, include a copy of your written request for a copy of the ADR procedure and any written response.

_____ **Denied access to ADR**

Prior to filing a complaint, did you request ADR in writing in accordance with the procedure adopted by your association or in the absence of a procedure did you request ADR by writing directly to the board? Was your request ignored or denied? If yes, include a copy of your written request for ADR and any written response.

_____ **Denied access to accounting/financial records**

Prior to filing a complaint, did you request to review the records in writing? Was your request denied or ignored? Was your request specific as to records requested? If yes, include a copy of your written request to review the financial records and any written response.

_____ **Minutes not provided from open meeting**

Prior to filing a complaint, did you request the minutes in writing? Was your request denied or ignored? If yes, include a copy of your written request for a copy of the minutes and any written response.

_____ **Appropriate notice for open meeting not given**

Prior to filing a complaint, did you check with the association office to verify it had a copy of the notice? Did you make a written request to the board for a copy of the notice of the meeting you believe was not appropriately advertised? If yes, describe the circumstances which make you believe notice was not provided. Include a copy of your request for a copy of the notice of the open meeting and any written response.

_____ **Binding vote taken without the benefit of an open meeting.**

Prior to filing a complaint, did you request a copy of the meeting minutes at which the binding vote should have been taken? If yes, describe the nature of the binding vote. Include a copy of your request for a copy of the minutes at which you believe the binding vote should have been taken and any written response.

Instructions

Include a brief explanation of each item checked along with a description of each document attached on a separate sheet of paper. The explanation should be no more than three or four paragraphs. Upon the initial filing of a complaint do not include more documentation than is necessary to establish jurisdiction. Do include copies of your letters to the board/association regarding ADR, financial records access, requests for minutes of open meetings, or a copy of the notice of the open meeting. Do not include copies of budgets, master deeds, by-laws, court decisions, newspaper articles, work orders, site plans, estimates, pictures, annual reports, and so on. Agency staff can not sift through voluminous documents to determine if there is a cause of action and may return the complaint package if the complaint is not filed in accordance with these instructions.

Mail your completed complaint form to

Association Regulation Unit
New Jersey Department of Community Affairs
PO Box 805
Trenton, New Jersey 08625-0805

For additional information or to download complaint forms and copies of the handouts concerning ADR, open meetings and access to financial records, in unit owner controlled associations, visit the website at <http://www.nj.gov/dca/divisions/codes/offices/ari.html>