

STATE OF NEVADA
DEPARTMENT OF BUSINESS AND INDUSTRY
REAL ESTATE DIVISION
OFFICE OF THE OMBUDSMAN FOR OWNERS IN
COMMON-INTEREST COMMUNITIES AND CONDOMINIUM HOTELS
2501 East Sahara Avenue, Suite 202
Las Vegas, Nevada 89104-4137
Telephone: 702-486-4480 • Facsimile: 702-486-4520
Statewide Toll Free Telephone: 877-829-9907
CICOmbudsman@red.state.nv.us
www.red.state.nv.us

ALTERNATIVE DISPUTE RESOLUTION (ADR) PROGRAM

Note: It is highly recommended that the following overview be read in its entirety.

Before submitting an ADR claim, Nevada Administrative Code (NAC) 38.350 requires you to:

- **Fill out Claim Form (#520) completely.** This form may be located on our website at www.red.state.nv.us. In filing the claim, you will be referred to as the “Claimant”. If there is more than one additional Claimant, the additional Claimants are to be entered on the Additional Claimant Form (#520A). The person or entity that you have a dispute with is the “Respondent”. If there are additional Respondents, list them on the Additional Respondent Form (#520B). You are required to state each disputed issue and what you believe to be an appropriate resolution. You will also need to list, by page and section, the sections of your association’s governing documents and/or Nevada Revised Statutes (NRS) 116 that apply to the disputed issues. You must also select your preference regarding the method of Alternative Dispute Resolution. Lastly, include a check or money order in the amount of \$50.00, payable to “NRED” or cash.
- **Serve the Respondent.** Within seven to ten (7-10) days, you will receive a package that must be served to the Respondent. **You may not serve the Respondent yourself.** Refer to the section titled: **Filing and Serving the Claim** for instructions for proper service. You will have forty-five (45) days to serve the claim. The package has a copy of your claim, a copy of this form, Form # 520B, and an Affidavit of Service form. The Division will need a copy of the notarized Affidavit within ten (10) days of service.
- **Respondent’s Response.** NRS 38.320(4) requires that Respondents have thirty (30) days to respond after service. If the Respondent does not respond, an Arbitrator will be appointed by the Division. Respondents need to complete the Respondent Answer Form (#521). Respondents must provide a response to each of the issues stated to be disputed by Claimant(s) and provide any supporting documents. Respondents must list by page and section, the sections of the association’s governing documents and/or NRS 116 that support their response. Respondents will also have an opportunity to select their preference regarding the method of resolution as well. Lastly, the response form must also be accompanied by cash, check or money order in the amount of \$50.00, payable to “NRED”. The Division will send a copy of the response to the Claimant.
- **Select a Mediator/Arbitrator.** Claimants and Respondents are sent resumes of qualified Mediators/Arbitrators. Parties have thirty (30) days to notify the Division in writing who they would like to preside over the ADR process. **If both sides cannot mutually agree upon a Mediator/Arbitrator, the Division will appoint one.** After a Mediator/Arbitrator is appointed, that person will govern the mediation or arbitration process through issuance of his or her decision. The Division’s only role in the ADR program is to gather the initial filings from each side and facilitate the appointment of a Mediator or Arbitrator.

Timeline and Procedures Governing the ADR Program

The timeline and procedures governing the steps involved in the ADR program are under NAC 38.350, and Nevada Rules of Civil Procedure (NCRP) 4. Subsidized ADR information and copies of NAC 38.350 and NCRP are available on our website: www.red.state.nv.us.

Rules Governing Conduct of Arbitration

Except as otherwise provided and where inconsistent with the provisions of NRS 38.300 to 38.360 inclusive, an arbitration of a claim must be conducted in accordance with the provisions of NRS 38.231, 38.232, 38.233, 38.236 to 38.239 inclusive, 38.242 and 38.243.

Governing Documents

The following are referred to collectively as “governing documents”.

- The Declaration for the common-interest community and any amended declaration (CC & Rs);
- The Rules and Regulations;
- The Bylaws; and
- Any other documents that govern the operation of the common-interest community or the association.

Overview of the ADR Law

Parties that are in disagreement over an association’s governing documents or differing assessments (including fines), must complete the ADR program under NRS 38.330 before any civil action is taken. Further, if an association provides a method of dispute resolution, that procedure **must be exhausted** before filing an ADR claim. Any applicable statute of limitations that has not expired before to the filing a claim under this law is suspended until the conclusion of the ADR process.

This law does not apply to parties seeking injunctive relief in which there is an immediate threat of irreparable harm, or an action relating to the title of the residential property. This law also does not apply to civil disputes between owners, or between owners and their association that do not involve questions arising under the governing documents or concerning assessments. For example, if one owner has cut down a neighbor’s tree, the dispute does not involve the governing documents or assessment issues.

If a civil court case is filed between a homeowner and an association concerning governing document or assessment disputes before the ADR process has been completed, the courts must dismiss that case without taking any action on it.

Choices for Alternative Dispute Resolution

The parties may select one of three methods of Alternative Dispute Resolution. Note that **if all parties involved do not agree to proceed with a binding arbitration or mediation, the case must proceed through the non-binding arbitration process.**

- **Mediation** - The parties meet with an approved Mediator, who promotes reconciliation, agreement, or compromise. Discussions of evidence are less formal and less structured than in arbitration. If mediation is successful, the parties sign a written agreement, which becomes enforceable among the parties. Mediation and associated fees and costs may be less expensive than arbitration. NRS 38.330 states, in part, that mediation must be completed within sixty (60) days unless the parties agree otherwise. The Division will count sixty (60) days from the date the claim has been assigned to the Mediator.
- **Non-binding Arbitration** - The parties agree to present their respective cases to an approved Arbitrator, who renders a decision. The difference between binding and non-binding arbitration is that in non-binding arbitration the Arbitrator's decision is not presumed to be final. Any of the parties can proceed to file a civil lawsuit after a non-binding arbitration. The lawsuit will proceed as though the arbitration had not taken place. However, if the party who files the lawsuit does not obtain a more favorable judgment than the arbitration award, that party will be required to pay all of the costs and attorneys fees for the opposing party(ies) incurred after the lawsuit was filed. The Division recommends that non-binding Arbitrations be completed within ninety (90) days of being assigned to the Arbitrator unless the Arbitrator directs otherwise. The Division will count ninety (90) days from the date the claim has been assigned to the Arbitrator.
- **Binding Arbitration** - Under a more formal process, each of the parties has an opportunity to present their cases and witnesses, if any. An award resulting from a binding arbitration is final and binding upon the parties. The final decision is enforceable in the same manner as a civil judgment. It can only be vacated if the circumstances set forth in NRS 38.241 are met. **If all parties involved select binding arbitration** as the method of resolution and the parties submit a subsidy application at the time of filing with the Division, the parties may have a portion of the Arbitrator's fee subsidized by the Division, provided all requirements for subsidization have been met. Information concerning the Subsidization Program can be found on the website at www.red.state.nv.us, click on publications, brochures, Alternative Dispute Resolution Subsidy Program. The Division recommends that binding arbitrations be completed within ninety (90) days of being assigned to the Arbitrator unless the Arbitrator directs otherwise. The Division will count ninety (90) days from the date the claim has been assigned to the Arbitrator.

Serving the Claim

Per NRS 38.320(3), the Claimant must serve the claim, in the manner described under Nevada Rules of Civil Procedures 4, with a blank Respondent Answer Form, a copy of this overview, a copy of the claim, and subsidy information (when applicable) within forty-five (45) days after filing the claim with the Division. The Division will provide an Affidavit of Service form showing the required documents that must be served. The Affidavit of Service Form must be completed by the person who served the Respondent(s) and notarized. The completed Affidavit of Service must be **received in our office no later than ten (10) days after the date that the claim is served on a Respondent.** If there are multiple Respondents each Respondent must be separately served with the set of documents described above, and a separate Affidavit of Service must be filed concerning the service on each individual Respondent. The time provided to serve the Respondent(s) is set forth under NAC 38.350(1). The Division does not have the authority to grant an extension of time for the service of the claim.

Who may serve required documents? The sheriff of the county where the Respondent is found or any citizen of the United States over eighteen (18) years of age who is not a Claimant or Respondent. A process service can be used.

How service must be made:

- **Service on a Nevada Corporation:** Service shall be made upon the president or other corporate head, secretary, cashier, 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.
- **Service on a Non-Nevada Corporation:** Service shall be made upon the agent designated for service of process, in Nevada, or its managing agent, business agent, cashier, 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.
- **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 therein, 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 inability to locate the Respondent:** Application to a court for an order of publication in the manner described in Rule 4 of the Nevada Rules of Civil Procedure can be made.

Time for Filing Response by Parties Served with a Claim

The Division must receive the Respondent's response (which is previously described) not later than thirty (30) days from the date of service. The time provided to respond to the claim is set forth under NAC 38.350(1). The Division does not have the authority to grant an extension of time to respond to the claim.

Selection of a Mediator or Arbitrator

Claimants and Respondents will be sent resumes of qualified Mediators/Arbitrators. Parties have thirty (30) days to notify the Division in writing who they would like to preside over the ADR process. **If both sides cannot mutually agree upon a Mediator/Arbitrator, the Division will appoint one.** After a mediator/Arbitrator is appointed, that person will govern the mediation or arbitration process through issuance of his or her decision.

Completion of the Process

Per NAC 38.350(7), the Division will issue a certificate certifying that the claim has been submitted to arbitration or mediation as required by NRS 38.310 within 30 days after receiving a copy of:

- (a) The agreement reached through mediation;
- (b) The award reached through binding or nonbinding arbitration; or
- (c) Written verification from the arbitrator which confirms that the arbitrator served notice of the arbitration hearing on both parties and that the person upon whom a copy of the written claim was previously served failed to appear at the hearing.

Enforcement of Mediation Agreement or Arbitration Award

- **Mediation:** An agreement reached through mediation may be enforced as any other written agreement.
- **Nonbinding Arbitration Award:** If neither party to an arbitration award starts a civil action in court within thirty (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 38.239. The court will enter a judgment, for what is contained in the arbitration award. The judgment can be enforced through the court.
- **Binding Arbitration Award:** If neither party to an arbitration award moves to vacate (give up) the award within ninety (90) days after the service of the award, for the very limited reasons given in NRS 38.241, either party may apply to the court for verification of the award under NRS 38.239, and obtain a judgment which can be enforced through the court.

CAUTION: Failure to apply to the court for confirmation of an arbitration award within the time specified in NRS 38.330(5) may make the award unenforceable, which means it may not be able to be collected.

Assistance the Division can Provide with the ADR Process

Division staff can assist the parties in understanding the process and forms used in the ADR process. The Division cannot give any party legal advice, and cannot advise whether an association's governing documents have or have not been violated or whether a provision is enforceable. The Division's role is to facilitate the process. The Division does not employ or otherwise control the performance of the work by the Mediators or Arbitrators. The Division is not responsible for and does not endorse any conduct by any Mediator, Arbitrator, or party. The Division has no stake in the outcome of any dispute. All fees and charges of the Mediator or Arbitrators are due and payable directly to the mediator or Arbitrator. Any amount of subsidy for a binding arbitration, if granted, is paid directly to the Arbitrator. The Division has no authority to regulate the fees or charges, or to collect any sums payable to a mediator or Arbitrator. NRS 38.360(1) states that the Division shall administer the provisions of NRS 38.300 to 38.360, inclusive, and may adopt such regulations as are necessary to carry out those provisions.

Other questions concerning this program may be directed to Gordon Milden at:

STATE OF NEVADA
DEPARTMENT OF BUSINESS AND INDUSTRY
REAL ESTATE DIVISION
OFFICE OF THE OMBUDSMAN FOR OWNERS IN
COMMON-INTEREST COMMUNITIES AND CONDOMINIUM HOTELS
2501 EAST SAHARA AVENUE, SUITE 202
LAS VEGAS, NEVADA 89104-4137
(702) 486-4480 • Fax (702) 486-4520
Statewide Toll Free Telephone: (877) 829-9907