

## ALTERNATIVE DISPUTE RESOLUTION PROCEDURE

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., both require Home Owners' Associations to provide a "fair and efficient" alternative to litigation for Association members (unit owners) to resolve "housing related" (meaning matters related directly to association concerns, not personal situations) disputes between one another or with the association. This procedure is termed an Alternative Dispute Resolution (ADR) and the details of the Regal Point Homeowners Association ADR procedure are as follows:

In the event a housing related dispute arises between an individual member of the Regal Point Homeowners Association and the governing body of the Regal Point Homeowners Association (the Board of Directors of the HOA) or between two individual homeowners, and when this dispute cannot be resolved to both parties' satisfaction by direct discussions, then:

**A. The parties agree to endeavor first to settle the dispute by mediation** administered, if possible, by a fair, reasonable and honest current or former member of the Regal Point Homeowners Association (except that no current member of the Board of Directors may serve as mediator), as appointed by the Secretary of Board of Directors. Pursuant to section 14 of the New Jersey Condominium Act, any costs for mediation are common expenses meaning that those costs are shared equally by all members of the Association. Because ADR is intended to be an informal proceeding, it is not necessary to secure legal representation. However, a complainant may choose to be represented by a lawyer but the complainant is responsible for his own legal costs.

**B. The parties further agree that any unresolved controversy remaining after this mediation shall be settled by an Arbitration Hearing** administered, if possible, by a fair, reasonable and honest current or former member of the Regal Point Homeowners Association (except that no current member of the Board of Directors may serve as arbitrator), as appointed by the Secretary of the Board of Directors, in accordance with the Association's arbitration rules and judgment on the decision rendered by the arbitrator may be entered in any court having jurisdiction thereof.

As allowed by the Condominium Act, in order to initiate the arbitration process, the complainant must pay an Administrative Filing Fee of \$500 which will be refundable after costs have been deducted. Claims shall be heard by a single arbitrator. The place of arbitration shall be the Township of South Brunswick, in the County of Middlesex, in the State of New Jersey, unless both parties agree to an alternate location. The arbitration shall be governed by the laws of the State of New Jersey. If the value of the dispute is under \$5,000 there shall be no discovery other than the exchange of documents. If the value of the dispute exceeds \$5,000, discovery shall consist of no more than three (3) depositions of one (1) hour or less. Each party shall bear its own costs and expenses and an equal share of the arbitrators' and administrative fees of arbitration. The decision shall not need to be accompanied by a written opinion.

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, the claimant may 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, the claimant should be prepared to refer to specific laws, portions of the governing documents or rules which one believes the board violated

### **FILING REQUIREMENTS:**

A Request for ADR must be made in writing to the Secretary of the Board of Directors. The Secretary of the Board of Directors must acknowledge receipt of this Request within Fifteen (15) days of receipt and schedule the initial **Mediation Session** within Sixty (60) days of the filing date. If Mediation is unsuccessful, the Secretary of the Regal Point Homeowners Association Board will have an additional Sixty (60) days to commence an Arbitration Hearing.

A **Demand for an Arbitration Hearing** shall require a Five Hundred Dollar (\$500) check or money order made payable to the Regal Point Homeowners Association for the Administrative Filing Fee as detailed above. The filing fee must be paid before a matter is considered properly filed. If a court order directs that a specific party is responsible for the filing fee, it is the responsibility of the filing party to either make such payment to the Regal Point Homeowners Association and seek reimbursement as directed in the court order or to make other such arrangements so that the filing fee is submitted to the HOA with the Demand. The party filing the Demand with the Secretary of the Board of Directors is the claimant and the opposing party is the respondent regardless of which party initiated the court action. Parties may request that the arbitrator alter the order of proceedings, if necessary. It is the responsibility of the filing party to ensure that any conditions precedent to the filing of a case are met prior to filing for an arbitration hearing, as well as any time requirements associated with the filing. Any dispute regarding whether a condition precedent has been met may be raised to the arbitrator for determination. Parties to any existing dispute who have not previously agreed to use these rules may commence an arbitration hearing under these rules by filing a written Submission Agreement and the administrative filing fee. To the extent that the parties' Submission Agreement contains any variances from these rules, such variances should be clearly stated in the Submission Agreement. Information to be included with any arbitration filing includes: the name of each party; the address for each party including telephone and fax numbers and e-mail addresses; if applicable, the names, addresses, telephone and fax numbers and e-mail addresses of any known representative for each party; a statement setting forth the nature of the claim including the relief sought and the \$ amount (if any) involved. The filing party shall simultaneously provide a copy of the Demand and any supporting documents to the opposing party. The Secretary of the Board of Directors shall provide notice to the parties (or their representatives if so named) of the receipt of a Demand or Submission within fifteen (15) days of receipt when the administrative filing requirements have been satisfied. The date on which the filing requirements are satisfied shall establish the date of

filing the dispute for administration. However, all disputes in connection with the determination of the date of filing may be decided by the arbitrator. If the filing does not satisfy the filing requirements set forth above, the Secretary of the Board of Directors shall acknowledge to all named parties receipt of the incomplete filing and inform the parties of the filing deficiencies. If the deficiencies are not cured within Sixty (60) Days, the filing may be returned to the initiating party.

### **ANSWERS AND COUNTERCLAIMS:**

A respondent may file an answering statement with the arbitrator within thirty (30) calendar days after notice of the filing of the Demand is sent to the Homeowners Association. The respondent shall, at the time of any such filing, send a copy of any answering statement to the claimant and to all other parties to the arbitration. If no answering statement is filed within the stated time, the respondent will be deemed to deny the claim. Failure to file an answering statement shall not operate to delay the arbitration. A respondent may file a counterclaim at any time after notice of the filing of the Demand is determined, subject to the limitations set forth below (see "Changes of Claim"). The respondent shall send a copy of the counterclaim to the claimant and all other parties to the arbitration. If a counterclaim is asserted, it shall include a statement setting forth the nature of the counterclaim including the relief sought and the \$ amount (if any) involved. If the respondent alleges that a different arbitration provision is controlling, the matter will be administered in accordance with the arbitration provision determined by the arbitrator.

A party may at any time prior to the close of the hearing or by the date established by the arbitrator increase or decrease the amount of its claim or counterclaim. Written notice of the change of claim amount must be provided to all parties. If the change of claim amount results in an increase in administrative fee, the balance of the fee is due before the change of claim amount may be accepted by the arbitrator. Any new or different claim or counterclaim, as opposed to an increase or decrease in the amount of a pending claim or counterclaim, shall be made in writing and filed with the Secretary of the Board of Directors and a copy shall be provided to the other party who shall have a period of thirty (30) calendar days from the date of such transmittal within which to file an answer to the proposed change of claim or counterclaim with the Secretary of the Board of Directors. After the arbitrator is appointed, however, no new or different claim may be submitted except with the arbitrator's consent.

### **INTERPRETATION AND APPLICATION OF RULES:**

The arbitrator shall interpret and apply these rules insofar as they relate to the arbitrator's powers and duties.

In matters between individual unit owners, the same ADR procedure as described above will be utilized to resolve "housing related" disputes. Both parties must agree to this procedure in advance and neither party is compelled to take part in the HOA's ADR process.

The arbitrator shall make his final determination within seven (7) days of the adjournment of the arbitration hearing and apprise all parties as to that determination.