



# **Community Association Alternative Dispute Resolution Models**

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## Statement from CAI Staff

Date: August 1, 2011

On behalf of CAI and NBC-CAM, we are honored to present you with this packet of information on select states and jurisdictions that have enacted Alternative Dispute Resolution (ADR) models for community associations. Enclosed in this packet you will find:

- CAI's Alternative Dispute Resolution Policy Statement
- Summaries of statutes from various states
- Appendixes of statutes from various states

We hope that this information will assist in your efforts. We truly appreciate the opportunity to provide these resources and we look forward to providing additional resources to assist your effort.

## Background

In the United States property law and laws governing community associations are the purview of state government, as such, laws governing the operation and governance of community associations vary across jurisdictions. In the case of state laws mandating the use of ADR, there is no set pattern. However, in CAI's experience, states that have seen significant housing development during the past 20 years tend to have more sophisticated laws governing associations, and many address issues of ADR.

This report provides a quick overview of states with ADR requirements as they apply to community associations. While it is not an exhaustive list, it represents an examination of states with significant community association housing stock and the statutes cited provide an overview of the various policy alternatives in existence on ADR. In addition to the state requirements noted, CAI supports the adoption of the Uniform Common Interest Ownership Act (UCIOA), a model bill developed for states by the National Conference of Commissioners on Uniform State Law (NCCUSL). The most recent version of this act, adopted in 2008, provides that an association may require ADR as a prerequisite dispute settlement mechanism prior to litigation<sup>1</sup>. The UCIOA model act is seen by many within CAI and within the public policy community as a benchmark for regulation of community associations.

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<sup>1</sup> Uniform Common Interest Ownership Act (2008), *SECTION 3-102(a)19*

# **CAI's Alternative Dispute Resolution Policy Statement**

## **Policy**

Community Associations Institute (CAI) recognizes the need for and supports the use of alternative dispute resolution mechanisms to resolve disputes arising in community associations in appropriate cases.

## **Background**

Alternative Dispute Resolution (ADR) is viewed as a substitute vehicle to settle disputes outside of the traditional courtroom setting. There are several different procedures that fall under the definition of ADR from mediation to court-mandated binding arbitration. It is understood that conflicts will arise and that there are different vehicles to help resolve these conflicts. Many have embraced alternative dispute resolution, for it gives both parties involved in the dispute a method for resolving the dispute outside of the traditional courtroom. Community associations should whenever possible and whenever appropriate resort to this type of conflict resolution process, for it usually helps contain the heavy cost of resolving the dispute. ADR is viewed as a legitimate resource for many and an option to avoid costly litigation in the traditional forum. It is respected by both state legislatures and state courts.

It is also understood that ADR may not be the ideal option for resolving a dispute but if possible should be used if it does not compromise the rights of the community association. CAI recognizes that the financial costs and emotional investments required by litigation may be a burden on and detriment to community associations and owners. CAI encourages the use of mediation and arbitration to resolve disputes involving the use of common property and common elements, the use of dwellings, and in architectural rules and regulations. CAI further encourages continuing education programs to assist its members in understanding the benefits and limitations of alternative dispute resolution mechanisms.

Adopted by the Board of Trustees, May 6, 1989

Reviewed by the Public Policy Committee, October 6, 1993

Reaffirmed by the Board of Trustees, October 9, 1993

Amended Approved by the Government & Public Affairs Committee, October 17, 2001

Approved by the Board of Trustees, May 3, 2002

## California

In summary:

- California has a specific ADR process for condominiums.
- The state encourages Internal Dispute Resolution (IDR); however, ADR is required prior to filing suit.
- Costs vary and are shared amongst parties.

In full:

In California, parties are first encouraged to resolve the dispute by Internal Dispute Resolution (IDR). The IDR procedure shall at a minimum satisfy all of the following requirements:

1. The procedure may be invoked by either party to the dispute and must be in writing.
2. The procedure provides for prompt deadlines and states the maximum time for the association to act on a request invoking the procedure.
3. If the procedure is invoked by a member, the association shall participate in the procedure.
4. If the procedure is invoked by the association, the member may elect not to participate in the procedure. If the member participates but the dispute is resolved other than by agreement of the member, the member shall have a right of appeal to the association's board of directors.
5. A resolution of a dispute pursuant to the procedure, which is not in conflict with the law or the governing documents, binds the parties and is judicially enforceable.
6. The procedure provides a means by which the member and the association may explain their positions.
7. A member of the association shall not be charged a fee to participate in the process.<sup>2</sup>

While IDR is encouraged, parties may not file a lawsuit unless they are able to prove they have attempted a form of ADR. ADR procedures are provided under Civil Code Sections 1369.510-1369.590. Associations must annually provide its members a summary of the provisions of the ADR section.

Disputes that may be resolved by ADR are limited to enforcement of the governing documents; damage to the common area; damage to a separate interest that the association is obligated to

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<sup>2</sup> California Civil Code §1363.830. Internal Dispute Resolution Procedure Requirements.

maintain or repair; or damage to a separate interest that arises out of, or is integrally related to, damage to the common area or a separate interest that the association is obligated to maintain or repair<sup>3</sup>. The disputes must be limited to the aforementioned actions and to damages that do not exceed \$5,000, as stated in Sections 116.220 and 116.21 of the Code of Civil Procedure. Small claims actions and assessment disputes, except as otherwise provided by law, may not be settled under ADR.

Parties may initiate the ADR process by serving a Request for Resolution (Request) to all other parties. The Request must include all of the following:

1. A brief description of the dispute between the parties;
2. A request for alternative dispute resolution;
3. A notice that the party receiving the Request is required to respond within 30 days of receipt or the request will be deemed rejected; and
4. If the party on whom the request is served is the owner of a separate interest, a copy of sections 1369.510-1369.590 from the California Civil Code.

The Request must be served by personal delivery, first-class mail, express mail, fax, or other means reasonably calculated to provide the party on whom the Request is served actual notice of the Request. The receiving party has 30 days following service to accept or reject the Request. If the party does not accept the Request within 30 days, the Request is considered rejected.

If the party accepts the Request, the parties must complete the ADR within 90 days after the receipt of acceptance, unless the period is extended by written stipulation and agreed to by both parties. The form of ADR may be binding or nonbinding, with the voluntary consent of the parties, and the costs are shared. The rules of Mediation are governed under Chapter 2 of Division 9 of the Evidence Code, and apply to all forms of ADR, with exception of arbitration.

At the time of commencement of an enforcement action, the party commencing the action must file with the initial pleading a certificate stating that one or more of the following conditions is satisfied:

1. Alternative dispute resolution has been completed in compliance with state law;
2. One of the other parties to the dispute did not accept the terms offered for ADR; or

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<sup>3</sup> California Civil Code §1368.3. Standing to Sue & Defend

3. Preliminary or temporary injunctive relief is necessary.

If one of the parties did not accept the ADR terms, the court may refer the matter to ADR and the costs are shared amongst the parties.

In determining the amount of the reward, the court may consider any party's refusal to participate in ADR prior to the lawsuit being filed. The prevailing party may be awarded attorney's fees and costs.

## Colorado

In summary:

- ADR is encouraged, but not required, prior to filing litigation.
- Associations must adopt a written procedure for addressing disputes.
- The state offers mediation services through the Office of Dispute Resolution.
- Fees range from \$50-\$75 per hour, with a two hour minimum, for both parties for mediation.

In full:

In Colorado, condominium associations are required to adopt a written policy setting forth its procedure for addressing disputes between the association and unit owners. The state permits associations to specify situations in which disputes must be resolved by binding arbitration, or another means of ADR.

Associations are strongly encouraged to use ADR as a procedure to resolve disputes within common interest communities. The state encourages associations to make use of all public and private resources for ADR, including those offered by the Office of Dispute Resolution (ODR) within the Colorado Judicial Branch. The ODR has over 60 contract mediator and neutrals, and offers mediation and other services across the state. The ODR is funded by the dispute resolution fund, which consists of monies collected from mediation services, monies appropriated by the General Assembly, and monies collected from federal grants.<sup>4</sup> Each party who uses the ODR program pays a \$50-\$75 per hour fee, with a two hour minimum. The ODR offers reduced fees for qualifying individuals.

The state permits any controversy between an association and a unit owner to be submitted to mediation by agreement of the parties prior to the commencement of any legal proceeding. Mediation is subject to the Colorado Dispute Resolution Act.<sup>5</sup> The state further permits any court to refer a case for mediation services. Parties referred may select to use mediators from private organizations or from the ODR. Upon completion of the service, the mediator must submit a written statement to court certifying the parties have met with the mediator.

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<sup>4</sup> Colorado, Office of Dispute Resolution; <http://www.courts.state.co.us/Administration/Unit.cfm?Unit=odr>

<sup>5</sup> [Colorado Dispute Resolution Act C.R.S., § 13-22-301, et seq.](#)

## Florida

In summary:

- Florida has a specific process of ADR for condominiums.
- The state prefers and has a procedure for voluntary mediation.
- Mediation is required prior to proceeding with arbitration or litigation proceedings.
- Costs of mediation vary depending on mediator and are either shared or a system is created and agreed to by the parties. Arbitrators may award the costs of the arbitration to either party.

In full:

In Florida, ADR as it relates to condominiums is regulated under Chapter 718 Part I of the Florida Statutes. First, voluntary mediations through Citizen Dispute Settlement Centers (center) are encouraged. These centers may be established by the chief judge of a judicial circuit, after consultation with the board of county commissioners of a county or with two or more boards of county commissioners of counties within the judicial circuit, for such county or counties, with the approval of the Chief Justice. The council is permitted to seek and accept contributions from counties and municipalities within the geographical jurisdiction of the center and from agencies of the federal government, private sources, and other available funds. Each mediation session conducted by a center is nonjudicial and informal. No adjudication, sanction, or penalty may be made or imposed by the mediator or the center.<sup>6</sup>

In the event the dispute cannot be settled and mandatory nonbinding arbitration or mediation is required, the Division of Florida Condominiums, Timeshares, and Mobile Homes (Division) of the Department of Business and Professional Regulation employs full-time attorneys to act as arbitrators to conduct the arbitration hearings. The decision of the arbitrator is final; however, the decision is not deemed as final agency action, and parties may proceed in a trial de novo unless the parties have agreed that the arbitration is binding. If judicial proceedings are initiated, the final decision of the arbitrator will be admissible in evidence in the trial de novo.

Disputes that may be addressed by ADR are between two or more parties that involve the authority of the board of directors to require any owner to take any action, or not to take any action, involving that owner's unit and alter or add to a common area or element. Also the failure

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<sup>6</sup> 2010 Florida Statutes, 44.201 Citizen Dispute Settlement Centers; establishment; operation; confidentiality.

of a governing body to properly conduct elections, give adequate notice of meetings or other actions, properly conduct meetings, or allow the inspection of books and records may be addressed.

“Dispute” does not include any disagreement that primarily involves: title to any unit or common element; the interpretation or enforcement of any warranty; the levy of a fee or assessment, or the collection of an assessment levied against a party; the eviction or other removal of a tenant from a unit; alleged breaches of fiduciary duty by one or more directors; or claims for damages to a unit based upon the alleged failure of the association to maintain the common elements or condominium property.

Prior to the institution of court litigation, a party to a dispute must petition the Division for nonbinding arbitration. The petition must be accompanied by a \$50 filing fee. The petition must recite, and have attached, supporting proof that the petitioner gave respondents the following:

1. Advance written notice of the specific nature of the dispute;
2. A demand for relief, and a reasonable opportunity to comply or to provide the relief; and
3. Notice of the intention to file an arbitration petition or other legal action in the absence of a resolution of the dispute.

Upon receipt, the petition must be promptly reviewed by the Division to determine the existence of a dispute and compliance with the requirements. Failure to include the allegations or proof of compliance results in the dismissal of the petition. If emergency relief is required and is not available through arbitration, a motion to stay the arbitration may be filed. The motion must be accompanied by a verified petition alleging facts that, if proven, would support entry of a temporary injunction, and if an appropriate motion and supporting papers are filed, the Division may abate the arbitration pending a court hearing and disposition of a motion for temporary injunction. If the Division determines that a dispute exists and that the petition substantially meets the requirements and any other applicable rules, a copy of the petition is served by the Division to all respondents.

Prior to or after the filing of the respondents’ answer to the petition, parties may request that the arbitrator refer the case to mediation. Upon receipt of the mediation request, the Division must promptly contact the parties to determine if there is agreement that mediation is appropriate. If the parties agree, the dispute is referred to mediation.

Once the case is referred to mediation, the parties must select a mutually acceptable mediator. The parties share equally the expense of mediation, unless otherwise agreed. To help with the selection, the arbitrator may provide a list of certified mediators. If the parties do not agree on a mediator within the time allowed by the arbitrator, the arbitrator must appoint a mediator from the list. Parties must then attend a mediation conference, as scheduled by the parties and mediator. Should a party fail to attend the conference, without the permission of the mediator or arbitrator, the arbitrator must impose sanctions against the party, including the striking of any pleadings filed, the entry of an order of dismissal or default if appropriate, and the award of costs and attorneys' fees incurred by the other parties.

Mediation proceedings must generally be conducted in accordance with the Florida Rules of Civil Procedure, and are confidential to the same extent as court-ordered mediation. If the mediator declares an impasse after a meditation conference has been held, the arbitration proceeding terminates, unless all parties agree to continue the arbitration proceeding, in which case the arbitrator's decision can be binding or nonbinding, as agreed upon by the parties.

In the arbitration proceeding, the arbitrator is not permitted to consider any evidence relating to the unsuccessful mediation except for a party's failure to attend the conference. If the parties do not agree to continue arbitration then the arbitrator must enter an order of dismissal and either party may institute a suit in a court of competent jurisdiction.

Arbitration must be conducted according to the rules adopted by the Division. At the request of any party to the arbitration, the arbitrator must issue subpoenas for the attendance of witnesses and the production of evidence. Subpoenas must be served and enforceable in the manner provided by the Florida Rules of Civil Procedure. The arbitration decision must be presented to the parties in writing and the decision is final in those disputes in which the parties have agreed to be bound. The decision is also final if a complaint for a trial de novo is not filed in a court of competent jurisdiction within 30 days. The right to file for a trial de novo entitles the parties to file a complaint in the appropriate trial court for a judicial resolution of the dispute. The prevailing party in an arbitration proceeding is awarded the costs of the arbitration and reasonable attorney's fees in an amount determined by the arbitrator. The award also includes any reasonable fees incurred in mediation. The party who files a complaint for a trial de novo shall be assessed the other party's arbitration costs, court costs, and other reasonable costs. Parties may enforce an arbitration award by filing a petition in a court of competent jurisdiction; however, a petition may not be granted until the time for appeal by filing a complaint for a trial

de novo has expired. A mediation settlement may also be enforced through a county or circuit court.

There is a special section in the Florida Statute that provides for disputes involving election irregularities. The section provides that every arbitration petition received by the division that challenges the legality of the election of any director of the board of administration must be handled on an expedited basis.

## Hawaii

In summary:

- The Hawaii Condominium Dispute Resolution Pilot Program expired June 30, 2011.
- ADR is nonbinding, but required prior to litigation.
- Costs are at the arbitrator's discretion.

In full:

In Hawaii, specific dispute resolution procedures relating to mediation were repealed June 30, 2011, due to the sunset of a 2008 amendment, Session Act 205 or the Condominium Dispute Resolution Program. Currently mediation or arbitration is required prior to litigation.<sup>7</sup>

ADR for condominiums is regulated under Hawaii Revised Statute 514B-161 through 514B-163. Under this section, parties to a dispute involving the interpretation or enforcement of an association's covenants may request mediation, thus requiring the other party to participate. Each party is responsible for its own costs, unless the parties agree to otherwise. If a party refuses to participate, a court may take the refusal into consideration when awarding expenses, costs and attorney fees. Mediation must be completed within 2 months of commencement, unless agreed to by the parties.

Parties with disputes involving the interpretation or enforcement of an association's covenant may also request the dispute be submitted to arbitration. The arbitration will be conducted in accordance with the rules adopted in the Uniform Arbitration Act.<sup>8</sup> The cost of the arbitration is contingent on the arbitrator. Disputes may not exceed \$2500 and may not involve the Real Estate Commission, mortgages, developers or contractors, actions seeking relief from property damage, collections of assessments subject to foreclosure, or personal injuries.

Once served with the written demand for arbitration, the served party has 20 days to apply to the circuit court in the judicial circuit in which the condominium is located for a determination that the dispute is unsuitable for arbitration. The court may consider the following in determining whether the subject matter of a dispute is unsuitable for disposition by arbitration:

1. The magnitude of the potential award, or any issue of broad public concern raised by the subject matter underlying the dispute;

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<sup>7</sup> Richard S. Ekimoto, Esquire; Ekimoto & Morris LLC; Honolulu, Hawaii

<sup>8</sup> Hawaii Revised Statutes 658A

2. Problems referred to the court where court regulated discovery is necessary;
3. The fact that the matter in dispute is a reasonable or necessary issue to be resolved in pending litigation and involves other matters not covered by the ADR section in state statutes;
4. The fact that the matter to be arbitrated is only part of a dispute involving other parties or issues which are not subject to arbitration; and
5. Any matters of dispute where disposition by arbitration, in the absence of complete judicial review, would not afford substantial justice to one or more of the parties.

The application to the circuit court must be made in a summary manner. The prevailing party is awarded its attorneys' fees and costs in an amount not to exceed \$200.

The arbitrator has sole discretion over the determination of the award. The award must be in writing and acknowledged in a manner as a deed for the conveyance of real estate and served personally or by certified mail. Within a year any party may apply to the court for an order confirming the award. The court must grant the order confirming the award, unless the award is vacated, modified or corrected, and a trial de novo is demanded, or the award is successfully appealed. All reasonable costs of the appeal shall be charged to the nonprevailing party.

Any party has the right to a trial de novo. Written demand must be made to the other parties within 10 days after service of the arbitration award and the trial de novo must be filed in circuit court within 30 days of written demand. The trier of fact at a trial de novo is not permitted knowledge of the award of arbitration. If the party demanding a trial de novo does not prevail, that party is charged with all costs of the trial.

## Nevada

In summary:

- Nevada has a specific ADR process for condominiums.
- ADR is required prior to filing litigation.
- The Real Estate Division of the Department of Business and Industry has discretion over who may bear the costs; additionally, the Division may subsidize binding arbitration costs.

In full:

In Nevada, ADR is required prior to any civil action based upon a claim involving the enforcement of an association's governing documents or the procedures used for imposing new or altering assessments. The party to a dispute must file a written claim to the Real Estate Division of the Department of Business and Industry (Division) that includes the following:

1. The complete names, addresses and telephone numbers of all parties to the claim;
2. A specific statement of the nature of the claim;
3. A statement of whether the person wishes to have the claim submitted to a mediator or to an arbitrator and, if the person wishes to have the claim submitted to an arbitrator, whether the person agrees to binding arbitration; and
4. Such other information as the Division may require.

The claim must be accompanied by a \$50 fee.<sup>9</sup> The party must then serve a copy of the claim in the manner prescribed under Rule 4 of the Nevada Rules of Civil Procedure to the other party with a statement explaining the procedures for mediation and arbitration. The party filing the claim has 45 days to serve the claim and may not serve it personally. The served party must respond in writing within 30 days after the date of service to the Division with a \$50 fee.

If all parties agree to have the claim submitted for mediation, they must do so in writing and proceed to select a mediator from a list maintained by the Division. If the parties fail to select a mediator the Division will select for them. Mediation must then be completed within 60 days after the parties agree to mediation. Any agreement made must be done so in writing and submitted to the Division within 20 days after the conclusion of the mediation. The parties are responsible for all costs of the mediation.

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<sup>9</sup> Residential Common Interest Alternative Dispute Resolution (ADR) Overview, Form 523; <http://www.red.state.nv.us/forms/523.pdf>

If the parties do not agree to mediation, they must select an arbitrator from the list maintained by the Division or have the Division select an arbitrator for them. The arbitrator must then provide the parties with an informational statement explaining the procedures and applicable laws within 5 days after selection. The parties must return a separate form acknowledging the receipt of the statement within 10 days.

The Division is granted the ability to provide payment for the fees for a mediator or an arbitrator to the extent that the Commission for Common-Interest Communities and Condominium Hotels approves the payment and there is money available for the purpose.

Except as otherwise provided, the arbitration must be consistent with the provisions of the Uniform Arbitration Act of 2000.<sup>10</sup> At any time during the arbitration the arbitrator may issue an order prohibiting the action upon which the claim is based. An award must be made within 30 days after the conclusion of the arbitration.

If all parties have agreed to nonbinding arbitration, any party may, within 30 days after the decision and award has been served, file a law suit. If the party does not do so within 30 days, the party is allowed, within 1 year, to apply to the proper court for confirmation of the award. If the parties agree in writing to binding arbitration, the award may be vacated and a rehearing granted upon application. If a party applies to have an award vacated and a rehearing is granted, or if the party commences a law suit, that party is responsible for all costs and fees if the party fails to obtain a more favorable award or judgment than what was first awarded.

As previously mentioned, the Division has responsibility for maintaining a list of mediators and arbitrators. The list must include mediators and arbitrators who have received training and experience in mediation or arbitration in the resolution of disputes involving common interest communities. The Division is permitted to require satisfactory proof of the mediator or arbitrator's training and experience prior to adding said persons to the list.

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<sup>10</sup> Nevada Revised Statutes 38.231-38.233, 38.236-38.239, and 38.242-38.243

## New Jersey

In summary:

- Associations are required to design their own ADR procedure.
- ADR is a required alternative to litigation.
- In condominiums, costs for ADR proceedings are common expenses.
- Condominium boards cannot be the ADR provider.

In full:

In New Jersey, associations are required to provide a fair and efficient alternative to litigation for disputes between unit owners and the association. The associations are authorized to design their ADR procedure as they feel best fits the needs of their members. ADR is required as an alternative to litigation and associations are required to provide written notice of the availability of ADR as a condition of issuing a fine.

The Association Regulation Unit within the Planned Real Estate Development section has the power to require associations to adopt ADR procedures should a deficiency be found; however, the Unit cannot provide ADR.

The state does not require a formal process to request ADR, so the process is left to be designed by the association. The request is recommended to be in writing, with the complaint clearly stated and that the party is specifically requesting they be provided ADR. There is not a specific time period to wait for a response from the other party; however, it is recommended that the party wait 14 days to receive a response from the other party. Should the other party not respond, it is recommended that the requesting party contact the Department of Community Affairs (DCA) and file a complaint. While DCA is responsible for this form of complaint, associations are not required to file their ADR procedures with DCA and there is no requirement to receive DCA approval before instituting the procedure. DCA also does not have the power to overturn or modify the outcome of an ADR proceeding.

Parties may have legal counsel; however, the parties are responsible for the cost of the representation. Otherwise, in condominiums, any costs in providing ADR are common expenses.

While there is no standard ADR procedure, there is one fundamental rule; the board cannot be the ADR provider. Neither the board nor any member can sit as or with the ADR panel. Board members can appear and present the board's position. Any party may appeal to court following an ADR procedure. The board cannot appeal a decision to itself. ADR is not automatically binding on boards, so if a board fails to cooperate with a recommendation, the opposing party has to enforce the right in court.<sup>11</sup>

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<sup>11</sup> Association Regulation Initiative, Alternative Dispute Resolution;  
[http://www.nj.gov/dca/divisions/codes/publications/pdf\\_ari/alternative\\_dispute\\_resolution.pdf](http://www.nj.gov/dca/divisions/codes/publications/pdf_ari/alternative_dispute_resolution.pdf)

## Virginia

In summary:

- Virginia permits condominium covenants to allow for ADR as a means toward solution to disputes.
- The ADR process is not specific to condominiums.
- Unless otherwise specified in the arbitration agreement; the arbitrator includes the costs of the proceedings in the award.

In full:

In Virginia, condominium covenants are permitted to provide for arbitration of disputes or other means of alternative dispute resolution. Any such resolution must be consistent with Title 8.01 – Civil Remedies and Procedure. Any person desiring to end a dispute, whether there is a suit pending or not, may submit the dispute to resolution, and agree that such submission will be entered as a court record. Once an agreement is made, the agreement is entered in the proceedings of the court, and the parties must submit to the award made in accordance to the agreement.

Neither party has the right to revoke an agreement to arbitrate except on a ground which would be good for revoking or annulling other agreements. Submission of any claim or controversy to arbitration pursuant to the agreement is a condition precedent to suit or action.

A written agreement to submit a dispute to arbitration is valid, enforceable and irrevocable, except in equity for the revocation of any contract. If an opposing party refuses to arbitrate then the court will order the parties to proceed with the arbitration. However, if the opposing party denies the existence of the dispute, the court will proceed summarily to the determination of the dispute's existence, and will order arbitration if found for the requesting party.

Parties of the dispute may specify the method of appointment of arbitrators in the agreement, or the court may appoint the arbitrators if the method is not stipulated. The arbitrators decide on the time and place for the hearing and determine the cause of notification, whether the notification be served personally or by certified mail no less than 5 days prior to the hearing. Arbitrators are permitted to issue subpoenas for the attendance of witnesses and for the production evidence, and have the power to administer oaths. All arbitrators must be in attendance at the hearings; however, a majority may issue the decision and award.

The award must be issued in writing, signed by the arbitrators joining the award, and delivered to the parties personally or by registered mail. The award must be made within the time fixed by the dispute, or at such time as the court orders. Unless otherwise provided in the arbitration agreement, the expenses and fees incurred in the conduct of the arbitration, and all other expenses, not including counsel fees, will be provided in the award. Parties may apply to a change in the award within 20 days after the delivery. The court must confirm the award, unless it is vacated.

In Virginia, mediation is significantly less regulated than arbitration. Mediators are selected by agreement of the parties in dispute. With the exception of the agreement, all work products and materials contained in the case files of a mediation program are confidential. Mediators are permitted to encourage and assist the parties in reaching a resolution, but are strictly prohibited from compelling or coercing the parties into a settlement. Mediators are obligated to remain impartial, and decline to participate further in a case should a new conflict arise. The written settlement of the dispute is enforceable in the same manner as any other written contract. The court may vacate the agreement should it determine the agreement was procured by fraud, the parties failed to provide substantial full disclosure of all relevant property and financial information, or there was evidence of misconduct by the mediator.

## Appendix A – California

1369.510. As used in this article:

(a) "Alternative dispute resolution" means mediation, arbitration, conciliation, or other nonjudicial procedure that involves a neutral party in the decisionmaking process. The form of alternative dispute resolution chosen pursuant to this article may be binding or nonbinding, with the voluntary consent of the parties.

(b) "Enforcement action" means a civil action or proceeding, other than a cross-complaint, for any of the following purposes:

(1) Enforcement of this title.

(2) Enforcement of the Nonprofit Mutual Benefit Corporation Law (Part 3 (commencing with Section 7110) of Division 2 of Title 1 of the Corporations Code).

(3) Enforcement of the governing documents of a common interest development.

1369.520. (a) An association or an owner or a member of a common interest development may not file an enforcement action in the superior court unless the parties have endeavored to submit their dispute to alternative dispute resolution pursuant to this article.

(b) This section applies only to an enforcement action that is solely for declaratory, injunctive, or writ relief, or for that relief in conjunction with a claim for monetary damages not in excess of the jurisdictional limits stated in Sections 116.220 and 116.221 of the Code of Civil Procedure.

(c) This section does not apply to a small claims action.

(d) Except as otherwise provided by law, this section does not apply to an assessment dispute.

1369.530. (a) Any party to a dispute may initiate the process required by Section 1369.520 by serving on all other parties to the dispute a Request for Resolution. The Request for Resolution shall include all of the following:

(1) A brief description of the dispute between the parties.

(2) A request for alternative dispute resolution.

(3) A notice that the party receiving the Request for Resolution is required to respond within 30 days of receipt or the request will be deemed rejected.

(4) If the party on whom the request is served is the owner of a separate interest, a copy of this article.

(b) Service of the Request for Resolution shall be by personal delivery, first-class mail, express mail, facsimile transmission, or other means reasonably calculated to provide the party on whom the request is served actual notice of the request.

(c) A party on whom a Request for Resolution is served has 30 days following service to accept or reject the request. If a party does not accept the request within that period, the request is deemed rejected by the party.

1369.540. (a) If the party on whom a Request for Resolution is served accepts the request, the parties shall complete the alternative dispute resolution within 90 days after the party initiating the request receives the acceptance, unless this period is extended by written stipulation signed by both parties.

(b) Chapter 2 (commencing with Section 1115) of Division 9 of the Evidence Code applies to any form of alternative dispute resolution initiated by a Request for Resolution under this article, other than arbitration.

(c) The costs of the alternative dispute resolution shall be borne by the parties.

1369.550. If a Request for Resolution is served before the end of the applicable time limitation for commencing an enforcement action, the time limitation is tolled during the following periods:

(a) The period provided in Section 1369.530 for response to a Request for Resolution.

(b) If the Request for Resolution is accepted, the period provided by Section 1369.540 for completion of alternative dispute resolution, including any extension of time stipulated to by the parties pursuant to Section 1369.540.

1369.560. (a) At the time of commencement of an enforcement action, the party commencing the action shall file with the initial pleading a certificate stating that one or more of the following conditions

is satisfied:

(1) Alternative dispute resolution has been completed in compliance with this article.

(2) One of the other parties to the dispute did not accept the terms offered for alternative dispute resolution.

(3) Preliminary or temporary injunctive relief is necessary.

(b) Failure to file a certificate pursuant to subdivision (a) is grounds for a demurrer or a motion to strike unless the court finds that dismissal of the action for failure to comply with this article would result in substantial prejudice to one of the parties.

1369.570. (a) After an enforcement action is commenced, on written stipulation of the parties, the matter may be referred to alternative dispute resolution. The referred action is stayed. During the stay, the action is not subject to the rules implementing subdivision (c) of Section 68603 of the Government Code.

(b) The costs of the alternative dispute resolution shall be borne by the parties.

1369.580. In an enforcement action in which fees and costs may be awarded pursuant to subdivision (c) of Section 1354, the court, in determining the amount of the award, may consider whether a party's refusal to participate in alternative dispute resolution before commencement of the action was reasonable.

1369.590. (a) An association shall annually provide its members a summary of the provisions of this article that specifically references this article. The summary shall include the following language:

"Failure of a member of the association to comply with the alternative dispute resolution requirements of Section 1369.520 of the Civil Code may result in the loss of your right to sue the association or another member of the association regarding enforcement of the governing documents or the applicable law."

(b) The summary shall be provided either at the time the pro forma budget required by Section 1365 is distributed or in the manner prescribed in Section 5016 of the Corporations Code. The summary shall include a description of the association's internal dispute resolution process, as required by Section 1363.850.

## Appendix B – Colorado

- (1) (a) (I) The general assembly finds and declares that the cost, complexity, and delay inherent in court proceedings make litigation a particularly inefficient means of resolving neighborhood disputes. Therefore, common interest communities are encouraged 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.
- (II) The general assembly hereby specifically endorses and encourages associations, unit owners, managers, declarants, and all other parties to disputes arising under this article to agree to make use of all available public or private resources for alternative dispute resolution, including, without limitation, the resources offered by the office of dispute resolution within the Colorado judicial branch through its web site.
- (b) On or before January 1, 2007, each association shall adopt a written policy setting forth its procedure for addressing disputes arising between the association and unit owners. The association shall make a copy of this policy available to unit owners upon request.
- (2) (a) Any controversy between an association and a unit owner arising out of the provisions of this article may be submitted to mediation by agreement of the parties prior to the commencement of any legal proceeding.
- (b) The mediation agreement, if one is reached, may be presented to the court as a stipulation. Either party to the mediation may terminate the mediation process without prejudice.
- (c) If either party subsequently violates the stipulation, the other party may apply immediately to the court for relief.
- (3) The declaration, bylaws, or rules of the association may specify situations in which disputes shall be resolved by binding arbitration under the uniform arbitration act, part 2 of article 22 of title 13, C.R.S., or by another means of alternative dispute resolution under the "Dispute Resolution Act", part 3 of article 22 of title 13, C.R.S.

## Appendix C – Florida

718.1255 Alternative dispute resolution; voluntary mediation; mandatory nonbinding arbitration; legislative findings.—

(1) DEFINITIONS.—As used in this section, the term “dispute” means any disagreement between two or more parties that involves:

(a) The authority of the board of directors, under this chapter or association document to:

1. Require any owner to take any action, or not to take any action, involving that owner’s unit or the appurtenances thereto.
2. Alter or add to a common area or element.

(b) The failure of a governing body, when required by this chapter or an association document, to:

1. Properly conduct elections.
2. Give adequate notice of meetings or other actions.
3. Properly conduct meetings.
4. Allow inspection of books and records.

“Dispute” does not include any disagreement that primarily involves: title to any unit or common element; the interpretation or enforcement of any warranty; the levy of a fee or assessment, or the collection of an assessment levied against a party; the eviction or other removal of a tenant from a unit; alleged breaches of fiduciary duty by one or more directors; or claims for damages to a unit based upon the alleged failure of the association to maintain the common elements or condominium property.

(2) VOLUNTARY MEDIATION.—Voluntary mediation through Citizen Dispute Settlement Centers as provided for in s. [44.201](#) is encouraged.

(3) LEGISLATIVE FINDINGS.—

(a) The Legislature finds that unit owners are frequently at a disadvantage when litigating against an association. Specifically, a condominium association, with its statutory assessment authority, is often more able to bear the costs and expenses of litigation than the unit owner who must rely on his or her own financial resources to satisfy the costs of litigation against the association.

(b) The Legislature finds that alternative dispute resolution has been making progress in reducing court dockets and trials and in offering a more efficient, cost-effective option to court litigation. However, the Legislature also finds that alternative dispute resolution should not be used as a mechanism to encourage the filing of frivolous or nuisance suits.

(c) There exists a need to develop a flexible means of alternative dispute resolution that directs disputes to the most efficient means of resolution.

(d) The high cost and significant delay of circuit court litigation faced by unit owners in the state can be alleviated by requiring nonbinding arbitration and mediation in appropriate cases, thereby reducing delay and attorney's fees while preserving the right of either party to have its case heard by a jury, if applicable, in a court of law.

(4) MANDATORY NONBINDING ARBITRATION AND MEDIATION OF DISPUTES.—The Division of Florida Condominiums, Timeshares, and Mobile Homes of the Department of Business and Professional Regulation shall employ full-time attorneys to act as arbitrators to conduct the arbitration hearings provided by this chapter. The division may also certify attorneys who are not employed by the division to act as arbitrators to conduct the arbitration hearings provided by this section. No person may be employed by the department as a full-time arbitrator unless he or she is a member in good standing of The Florida Bar. The department shall adopt rules of procedure to govern such arbitration hearings including mediation incident thereto. The decision of an arbitrator shall be final; however, a decision shall not be deemed final agency action. Nothing in this provision shall be construed to foreclose parties from proceeding in a trial de novo unless the parties have agreed that the arbitration is binding. If judicial proceedings are initiated, the final decision of the arbitrator shall be admissible in evidence in the trial de novo.

(a) Prior to the institution of court litigation, a party to a dispute shall petition the division for nonbinding arbitration. The petition must be accompanied by a filing fee in the amount of \$50. Filing fees collected under this section must be used to defray the expenses of the alternative dispute resolution program.

(b) The petition must recite, and have attached thereto, supporting proof that the petitioner gave the respondents:

1. Advance written notice of the specific nature of the dispute;
2. A demand for relief, and a reasonable opportunity to comply or to provide the relief; and
3. Notice of the intention to file an arbitration petition or other legal action in the absence of a resolution of the dispute.

Failure to include the allegations or proof of compliance with these prerequisites requires dismissal of the petition without prejudice.

(c) Upon receipt, the petition shall be promptly reviewed by the division to determine the existence of a dispute and compliance with the requirements of paragraphs (a) and (b). If emergency relief is required and is not available through arbitration, a motion to stay the arbitration may be filed. The motion must be accompanied by a verified petition alleging facts that, if proven, would support entry of a temporary injunction, and if an appropriate motion and

supporting papers are filed, the division may abate the arbitration pending a court hearing and disposition of a motion for temporary injunction.

(d) Upon determination by the division that a dispute exists and that the petition substantially meets the requirements of paragraphs (a) and (b) and any other applicable rules, a copy of the petition shall be served by the division upon all respondents.

(e) Before or after the filing of the respondents' answer to the petition, any party may request that the arbitrator refer the case to mediation under this section and any rules adopted by the division. Upon receipt of a request for mediation, the division shall promptly contact the parties to determine if there is agreement that mediation would be appropriate. If all parties agree, the dispute must be referred to mediation. Notwithstanding a lack of an agreement by all parties, the arbitrator may refer a dispute to mediation at any time.

(f) Upon referral of a case to mediation, the parties must select a mutually acceptable mediator. To assist in the selection, the arbitrator shall provide the parties with a list of both volunteer and paid mediators that have been certified by the division under s. [718.501](#). If the parties are unable to agree on a mediator within the time allowed by the arbitrator, the arbitrator shall appoint a mediator from the list of certified mediators. If a case is referred to mediation, the parties shall attend a mediation conference, as scheduled by the parties and the mediator. If any party fails to attend a duly noticed mediation conference, without the permission or approval of the arbitrator or mediator, the arbitrator must impose sanctions against the party, including the striking of any pleadings filed, the entry of an order of dismissal or default if appropriate, and the award of costs and attorneys' fees incurred by the other parties. Unless otherwise agreed to by the parties or as provided by order of the arbitrator, a party is deemed to have appeared at a mediation conference by the physical presence of the party or its representative having full authority to settle without further consultation, provided that an association may comply by having one or more representatives present with full authority to negotiate a settlement and recommend that the board of administration ratify and approve such a settlement within 5 days from the date of the mediation conference. The parties shall share equally the expense of mediation, unless they agree otherwise.

(g) The purpose of mediation as provided for by this section is to present the parties with an opportunity to resolve the underlying dispute in good faith, and with a minimum expenditure of time and resources.

(h) Mediation proceedings must generally be conducted in accordance with the Florida Rules of Civil Procedure, and these proceedings are privileged and confidential to the same extent as court-ordered mediation. Persons who are not parties to the dispute are not allowed to attend the mediation conference without the consent of all parties, with the exception of counsel for the parties and corporate representatives designated to appear for a party. If the mediator declares

an impasse after a mediation conference has been held, the arbitration proceeding terminates, unless all parties agree in writing to continue the arbitration proceeding, in which case the arbitrator's decision shall be binding or nonbinding, as agreed upon by the parties; in the arbitration proceeding, the arbitrator shall not consider any evidence relating to the unsuccessful mediation except in a proceeding to impose sanctions for failure to appear at the mediation conference. If the parties do not agree to continue arbitration, the arbitrator shall enter an order of dismissal, and either party may institute a suit in a court of competent jurisdiction. The parties may seek to recover any costs and attorneys' fees incurred in connection with arbitration and mediation proceedings under this section as part of the costs and fees that may be recovered by the prevailing party in any subsequent litigation.

(i) Arbitration shall be conducted according to rules adopted by the division. The filing of a petition for arbitration shall toll the applicable statute of limitations.

(j) At the request of any party to the arbitration, the arbitrator shall issue subpoenas for the attendance of witnesses and the production of books, records, documents, and other evidence and any party on whose behalf a subpoena is issued may apply to the court for orders compelling such attendance and production. Subpoenas shall be served and shall be enforceable in the manner provided by the Florida Rules of Civil Procedure. Discovery may, in the discretion of the arbitrator, be permitted in the manner provided by the Florida Rules of Civil Procedure. Rules adopted by the division may authorize any reasonable sanctions except contempt for a violation of the arbitration procedural rules of the division or for the failure of a party to comply with a reasonable nonfinal order issued by an arbitrator which is not under judicial review.

(k) The arbitration decision shall be presented to the parties in writing. An arbitration decision is final in those disputes in which the parties have agreed to be bound. An arbitration decision is also final if a complaint for a trial de novo is not filed in a court of competent jurisdiction in which the condominium is located within 30 days. The right to file for a trial de novo entitles the parties to file a complaint in the appropriate trial court for a judicial resolution of the dispute. The prevailing party in an arbitration proceeding shall be awarded the costs of the arbitration and reasonable attorney's fees in an amount determined by the arbitrator. Such an award shall include the costs and reasonable attorney's fees incurred in the arbitration proceeding as well as the costs and reasonable attorney's fees incurred in preparing for and attending any scheduled mediation.

(l) The party who files a complaint for a trial de novo shall be assessed the other party's arbitration costs, court costs, and other reasonable costs, including attorney's fees, investigation expenses, and expenses for expert or other testimony or evidence incurred after the arbitration hearing if the judgment upon the trial de novo is not more favorable than the arbitration decision.

If the judgment is more favorable, the party who filed a complaint for trial de novo shall be awarded reasonable court costs and attorney's fees.

(m) Any party to an arbitration proceeding may enforce an arbitration award by filing a petition in a court of competent jurisdiction in which the condominium is located. A petition may not be granted unless the time for appeal by the filing of a complaint for trial de novo has expired. If a complaint for a trial de novo has been filed, a petition may not be granted with respect to an arbitration award that has been stayed. If the petition for enforcement is granted, the petitioner shall recover reasonable attorney's fees and costs incurred in enforcing the arbitration award. A mediation settlement may also be enforced through the county or circuit court, as applicable, and any costs and fees incurred in the enforcement of a settlement agreement reached at mediation must be awarded to the prevailing party in any enforcement action.

(5) DISPUTES INVOLVING ELECTION IRREGULARITIES.—Every arbitration petition received by the division and required to be filed under this section challenging the legality of the election of any director of the board of administration must be handled on an expedited basis in the manner provided by the division's rules for recall arbitration disputes.

History.—s. 4, ch. 82-199; s. 4, ch. 85-60; s. 10, ch. 91-103; s. 5, ch. 91-426; s. 7, ch. 92-49; s. 232, ch. 94-218; s. 12, ch. 94-350; s. 37, ch. 95-274; s. 859, ch. 97-102; s. 2, ch. 97-301; s. 12, ch. 2002-27; s. 14, ch. 2008-28; s. 47, ch. 2008-240.

## Appendix D – Hawaii

### D. ALTERNATIVE DISPUTE RESOLUTION

§514B-161 Mediation; condominium management dispute resolution; request for hearing; hearing. (a) If a unit owner or the board of directors requests mediation of a dispute involving the interpretation or enforcement of the association's declaration, bylaws, or house rules, or a matter involving part VI, the other party in the dispute shall be required to participate in mediation. Each party shall be wholly responsible for its own costs of participating in mediation, unless at the end of the mediation process, both parties agree that one party shall pay all or a specified portion of the mediation costs. If a unit owner or the board of directors refuses to participate in the mediation of a particular dispute, a court may take this refusal into consideration when awarding expenses, costs, and attorneys' fees.

(b) Nothing in subsection (a) shall be interpreted to mandate the mediation of any dispute involving:

(1) Actions seeking equitable relief involving threatened property damage or the health or safety of association members or any other person;

(2) Actions to collect assessments;

(3) Personal injury claims; or

(4) Actions against an association, a board, or one or more directors, officers, agents, employees, or other persons for amounts in excess of \$2,500 if insurance coverage under a policy of insurance procured by the association or its board would be unavailable for defense or judgment because mediation was pursued.

(c) If any mediation under this section is not completed within two months from commencement, no further mediation shall be required unless agreed to by the parties.

[§514B-162] Arbitration. (a) At the request of any party, any dispute concerning or involving one or more unit owners and an association, its board, managing agent, or one or more other unit owners relating to the interpretation, application, or enforcement of this chapter or the association's declaration, bylaws, or house rules adopted in accordance with its bylaws shall be submitted to arbitration. The arbitration shall be conducted, unless otherwise agreed by the parties, in accordance with the rules adopted by the commission and of chapter 658A; provided that the rules of the arbitration service conducting the arbitration shall be use until the commission adopts its rules; provided further that where any arbitration rule conflicts with chapter 658A, chapter 658A shall prevail; and provided further that notwithstanding any rule to the contrary, the arbitrator shall conduct the proceedings in a manner which affords substantial justice to all parties. The arbitrator shall be bound by rules of substantive law and shall not be bound by rules of evidence, whether or not set out by statute, except for provisions relating to privileged communications. The arbitrator shall permit discovery as provided for in the Hawaii rules of civil procedure; provided that the arbitrator may restrict

the scope of such discovery for good cause to avoid excessive delay and costs to the parties or the arbitrator may refer any matter involving discovery to the circuit court for disposition in accordance with the Hawaii rules of civil procedure then in effect.

- (b) Nothing in subsection (a) shall be interpreted to mandate the arbitration of any dispute involving:
- (1) The real estate commission;
  - (2) The mortgagee of a mortgage of record;
  - (3) The developer, general contractor, subcontractors, or design professionals for the project; provided that when any person exempted by this paragraph is also a unit owner, a director, or managing agent, such person in those capacities, shall be subject to the provisions of subsection (a);
  - (4) Actions seeking equitable relief involving threatened property damage or the health or safety of unit owners or any other person;
  - (5) Actions to collect assessments which are liens or subject to foreclosure; provided that a unit owner who pays the full amount of an assessment and fulfills the requirements of section 514B-146 shall have the right to demand arbitration of the owner's dispute, including a dispute about the amount and validity of the assessment;
  - (6) Personal injury claims;
  - (7) Actions for amounts in excess of \$2,500 against an association, a board, or one or more directors, officers, agents, employees, or other persons, if insurance coverage under a policy or policies procured by the association or its board would be unavailable because action by arbitration was pursued; or
  - (8) Any other cases which are determined, as provided in subsection (c), to be unsuitable for disposition by arbitration.
- (c) At any time within twenty days of being served with a written demand for arbitration, any party so served may apply to the circuit court in the judicial circuit in which the condominium is located for a determination that the subject matter of the dispute is unsuitable for disposition by arbitration.

In determining whether the subject matter of a dispute is unsuitable for disposition by arbitration, a court may consider:

- (1) The magnitude of the potential award, or any issue of broad public concern raised by the subject matter underlying the dispute;
- (2) Problems referred to the court where court regulated discovery is necessary
- (3) The fact that the matter in dispute is a reasonable or necessary issue to be resolved in pending litigation and involves other matters not covered by or related to this chapter;

- (4) The fact that the matter to be arbitrated is only part of a dispute involving other parties or issues which are not subject to arbitration under this section; and
- (5) Any matters of dispute where disposition by arbitration, in the absence of complete judicial review, would not afford substantial justice to one or more of the parties.

Any such application to the circuit court shall be made and heard in a summary manner and in accordance with procedures for the making and hearing of motions. The prevailing party shall be awarded its attorneys' fees and costs in an amount not to exceed \$200.

- (d) In the event of a dispute as to whether a claim shall be excluded from mandatory arbitration under subsection (b)(7), any party to an arbitration may file a complaint for declaratory relief against the involved insurer or insurers for a determination of whether insurance coverage is unavailable due to the pursuit of action by arbitration. The complaint shall be filed with the circuit court in the judicial circuit in which the condominium is located. The insurer or insurers shall file an answer to the complaint within twenty days of the date of service of the complaint and the issue shall be disposed of by the circuit court at a hearing to be held at the earliest available date; provided that the hearing shall not be held within twenty days from the date of service of the complaint upon the insurer or insurers.
- (e) Notwithstanding any provision in this chapter to the contrary, the declaration, or the bylaws, the award of any costs, expenses, and legal fees by the arbitrator shall be in the sole discretion of the arbitrator and the determination of costs, expenses, and legal fees shall be binding upon all parties.
- (f) The award of the arbitrator shall be in writing and acknowledged or proved in like manner as a deed for the conveyance of real estate, and shall be served by the arbitrator on each of the parties to the arbitration, personally or by registered or certified mail. At any time within one year after the award is made and served, any party to the arbitration may apply to the circuit court of the judicial circuit in which the condominium is located for an order confirming the award. The court shall grant the order confirming the award pursuant to section 658A-22, unless the award is vacated, modified, or corrected, as provided in sections 658A-20, 658A-23, and 658A-24, or a trial de novo is demanded under subsection (h), or the award is successfully appealed under subsection (h). The record shall be filed with the motion to confirm award, and notice of the motion shall be served upon each other party or their respective attorneys in the manner required for service of notice of a motion.
- (g) Findings of fact and conclusions of law, as requested by any party prior to the arbitration hearing, shall be promptly provided to the requesting party upon payment of the reasonable cost thereof.
- (h) Any party to an arbitration under this section may apply to vacate, modify, or correct the arbitration award for the grounds set out in chapter 658A. All reasonable costs, expenses, and attorneys' fees on appeal shall be charged to the nonprevailing party.

[§514B-163] Trial de novo and appeal. (a) The submission of any dispute to an arbitration under section 514B-162 shall in no way limit or abridge the right of any party to a trial de novo.

- (b) Written demand for a trial de novo by any party desiring a trial de novo shall be made upon the other parties within ten days after service of the arbitration award upon all parties and the trial de novo shall be filed in circuit court within thirty days of the written demand. Failure to meet these deadlines shall preclude a party from demanding a trial de novo.
- (c) The award of arbitration shall not be made known to the trier of fact at a trial de novo.
- (d) In any trial de novo demanded under this section, if the party demanding a trial de novo does not prevail at trial, the party demanding the trial de novo shall be charged with all reasonable costs, expenses, and attorneys' fees of the trial. When there is more than one party on one or both sides of an action, or more than one issue in dispute, the court shall allocate its award of costs, expenses, and attorneys' fees among the prevailing parties and tax such fees against those nonprevailing parties who demanded a trial de novo in accordance with the principles of equity.

## Appendix E – Nevada

### MEDIATION AND ARBITRATION OF CLAIMS RELATING TO RESIDENTIAL PROPERTY WITHIN COMMON-INTEREST COMMUNITY

**NRS 38.300 Definitions.** As used in [NRS 38.300](#) to [38.360](#), inclusive, unless the context otherwise requires:

1. “Assessments” means:

(a) Any charge which an association may impose against an owner of residential property pursuant to a declaration of covenants, conditions and restrictions, including any late charges, interest and costs of collecting the charges; and

(b) Any penalties, fines, fees and other charges which may be imposed by an association pursuant to paragraphs (j) to (n), inclusive, of subsection 1 of [NRS 116.3102](#) or subsections 10, 11 and 12 of [NRS 116B.420](#).

2. “Association” has the meaning ascribed to it in [NRS 116.011](#) or [116B.030](#).

3. “Civil action” includes an action for money damages or equitable relief. The term does not include an action in equity for injunctive relief in which there is an immediate threat of irreparable harm, or an action relating to the title to residential property.

4. “Division” means the Real Estate Division of the Department of Business and Industry.

5. “Residential property” includes, but is not limited to, real estate within a planned community subject to the provisions of [chapter 116](#) of NRS or real estate within a condominium hotel subject to the provisions of [chapter 116B](#) of NRS. The term does not include commercial property if no portion thereof contains property which is used for residential purposes.

(Added to NRS by 1995, 1416; A [2003, 2251, 2274; 2007, 2277](#))

#### **NRS 38.310 Limitations on commencement of certain civil actions.**

1. No civil action based upon a claim relating to:

(a) The interpretation, application or enforcement of any covenants, conditions or restrictions applicable to residential property or any bylaws, rules or regulations adopted by an association; or

(b) The procedures used for increasing, decreasing or imposing additional assessments upon residential property,

□ may be commenced in any court in this State unless the action has been submitted to mediation or arbitration pursuant to the provisions of [NRS 38.300](#) to [38.360](#), inclusive, and, if the civil action concerns real estate within a planned community subject to the provisions of [chapter 116](#) of NRS or real estate within a condominium hotel subject to the provisions of [chapter 116B](#) of NRS, all administrative procedures specified in any covenants, conditions or restrictions applicable to the property or in any bylaws, rules and regulations of an association have been exhausted.

2. A court shall dismiss any civil action which is commenced in violation of the provisions of subsection 1.

(Added to NRS by 1995, 1417; A 1997, 526; [2007, 2278](#))

#### **NRS 38.320 Submission of claim for mediation or arbitration; contents of claim; fees; service of claim; written answer.**

1. Any civil action described in [NRS 38.310](#) must be submitted for mediation or arbitration by filing a written claim with the Division. The claim must include:

(a) The complete names, addresses and telephone numbers of all parties to the claim;

(b) A specific statement of the nature of the claim;

(c) A statement of whether the person wishes to have the claim submitted to a mediator or to an arbitrator and, if the person wishes to have the claim submitted to an arbitrator, whether the person agrees to binding arbitration; and

(d) Such other information as the Division may require.

2. The written claim must be accompanied by a reasonable fee as determined by the Division.

3. Upon the filing of the written claim, the claimant shall serve a copy of the claim in the manner prescribed in [Rule 4](#) of the Nevada Rules of Civil Procedure for the service of a summons and complaint. The claim so served must be accompanied by a statement explaining the procedures for mediation and arbitration set forth in [NRS 38.300](#) to [38.360](#), inclusive.

4. Upon being served pursuant to subsection 3, the person upon whom a copy of the written claim was served shall, within 30 days after the date of service, file a written answer with the Division. The answer must be accompanied by a reasonable fee as determined by the Division.

(Added to NRS by 1995, 1417)

**NRS 38.330 Procedure for mediation or arbitration of claim; payment of costs and fees upon failure to obtain a more favorable award or judgment in court.**

1. If all parties named in a written claim filed pursuant to [NRS 38.320](#) agree to have the claim submitted for mediation, the parties shall reduce the agreement to writing and shall select a mediator from the list of mediators maintained by the Division pursuant to [NRS 38.340](#). Any mediator selected must be available within the geographic area. If the parties fail to agree upon a mediator, the Division shall appoint a mediator from the list of mediators maintained by the Division. Any mediator appointed must be available within the geographic area. Unless otherwise provided by an agreement of the parties, mediation must be completed within 60 days after the parties agree to mediation. Any agreement obtained through mediation conducted pursuant to this section must, within 20 days after the conclusion of mediation, be reduced to writing by the mediator and a copy thereof provided to each party. The agreement may be enforced as any other written agreement. Except as otherwise provided in this section, the parties are responsible for all costs of mediation conducted pursuant to this section.

2. If all the parties named in the claim do not agree to mediation, the parties shall select an arbitrator from the list of arbitrators maintained by the Division pursuant to [NRS 38.340](#). Any arbitrator selected must be available within the geographic area. If the parties fail to agree upon an arbitrator, the Division shall appoint an arbitrator from the list maintained by the Division. Any arbitrator appointed must be available within the geographic area. Upon appointing an arbitrator, the Division shall provide the name of the arbitrator to each party. An arbitrator shall, not later than 5 days after the arbitrator's selection or appointment pursuant to this subsection, provide to the parties an informational statement relating to the arbitration of a claim pursuant to this section. The written informational statement:

(a) Must be written in plain English;

(b) Must explain the procedures and applicable law relating to the arbitration of a claim conducted pursuant to this section, including, without limitation, the procedures, timelines and applicable law relating to confirmation of an award pursuant to [NRS 38.239](#), vacation of an award pursuant to [NRS 38.241](#), judgment on an award pursuant to [NRS 38.243](#), and any applicable statute or court rule governing the award of attorney's fees or costs to any party; and

(c) Must be accompanied by a separate form acknowledging that the party has received and read the informational statement, which must be returned to the arbitrator by the party not later than 10 days after receipt of the informational statement.

3. The Division may provide for the payment of the fees for a mediator or an arbitrator selected or appointed pursuant to this section from the Account for Common-Interest Communities and Condominium Hotels created by [NRS 116.630](#), to the extent that:

(a) The Commission for Common-Interest Communities and Condominium Hotels approves the payment; and

(b) There is money available in the account for this purpose.

4. Except as otherwise provided in this section and except where inconsistent with the provisions of [NRS 38.300](#) to [38.360](#), inclusive, the arbitration of a claim pursuant to this section 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](#). At any time during the arbitration of a claim relating to the interpretation, application or enforcement of any covenants, conditions or restrictions applicable to residential property or any bylaws, rules or regulations adopted by an association, the arbitrator may issue an order prohibiting the action upon which the claim is based. An award must be made within 30 days after the conclusion of arbitration, unless a shorter period is agreed upon by the parties to the arbitration.

5. If all the parties have agreed to nonbinding arbitration, any party to the nonbinding arbitration may, within 30 days after a decision and award have been served upon the parties, commence a civil action in the proper court concerning the claim which was submitted for arbitration. Any complaint filed in such an action must contain a sworn statement indicating that the issues addressed in the complaint have been arbitrated pursuant to the provisions of [NRS 38.300](#) to [38.360](#), inclusive. If such an action is not commenced within that period, any party to the arbitration may, within 1 year after the service of the award, apply to the proper court for a confirmation of the award pursuant to [NRS 38.239](#).

6. If all the parties agree in writing to binding arbitration, the arbitration must be conducted in accordance with the provisions of this chapter. An award procured pursuant to such binding arbitration may be vacated and a rehearing granted upon application of a party pursuant to the provisions of [NRS 38.241](#).

7. If, after the conclusion of binding arbitration, a party:

(a) Applies to have an award vacated and a rehearing granted pursuant to [NRS 38.241](#); or

(b) Commences a civil action based upon any claim which was the subject of arbitration,

□ the party shall, if the party fails to obtain a more favorable award or judgment than that which was obtained in the initial binding arbitration, pay all costs and reasonable attorney's fees incurred by the opposing party after the application for a rehearing was made or after the complaint in the civil action was filed.

8. Upon request by a party, the Division shall provide a statement to the party indicating the amount of the fees for a mediator or an arbitrator selected or appointed pursuant to this section.

9. As used in this section, "geographic area" means an area within 150 miles from any residential property or association which is the subject of a written claim submitted pursuant to [NRS 38.320](#).

(Added to NRS by 1995, 1418; A [1999, 3016](#); [2001, 1283](#); [2003, 35, 39, 2251](#); [2007, 2278](#); [2009, 2904](#))

**NRS 38.340 Duties of Division: Maintenance of list of mediators and arbitrators; establishment of explanatory document.** For the purposes of [NRS 38.300](#) to [38.360](#), inclusive, the Division shall establish and maintain:

1. A list of mediators and arbitrators who are available for mediation and arbitration of claims. The list must include mediators and arbitrators who, as determined by the Division, have received training and experience in mediation or arbitration and in the resolution of disputes concerning associations, including, without limitation, the interpretation, application and enforcement of covenants, conditions and restrictions pertaining to residential property and the articles of incorporation, bylaws, rules and regulations of an association. In establishing and maintaining the list, the Division may use lists of qualified persons maintained by any organization which provides mediation or arbitration services. Before including a mediator or arbitrator on a list established and maintained pursuant to this section, the Division may require

the mediator or arbitrator to present proof satisfactory to the Division that the mediator or arbitrator has received the training and experience required for mediators or arbitrators pursuant to this section.

2. A document which contains a written explanation of the procedures for mediating and arbitrating claims pursuant to [NRS 38.300](#) to [38.360](#), inclusive.

(Added to NRS by 1995, 1419)

**NRS 38.350 Statute of limitations tolled.** Any statute of limitations applicable to a claim described in [NRS 38.310](#) is tolled from the time the claim is submitted for mediation or arbitration pursuant to [NRS 38.320](#) until the conclusion of mediation or arbitration of the claim and the period for vacating the award has expired.

(Added to NRS by 1995, 1419)

**NRS 38.360 Administration of provisions by Division; regulations; fees.**

1. 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.

2. All fees collected by the Division pursuant to the provisions of [NRS 38.300](#) to [38.360](#), inclusive, must be accounted for separately and may only be used by the Division to administer the provisions of [NRS 38.300](#) to [38.360](#), inclusive.

(Added to NRS by 1995, 1419)

## Appendix F – New Jersey

### Title 48 – Property 8B-14 Responsibilities of association

14. The association, acting through its officers or governing board, shall be responsible for the performance of the following duties, the costs of which shall be common expenses:

(a) The maintenance, repair, replacement, cleaning and sanitation of the common elements.

(b) The assessment and collection of funds for common expenses and the payment thereof.

(c) The adoption, distribution, amendment and enforcement of rules governing the use and operation of the condominium and the condominium property and the use of the common elements, including but not limited to the imposition of reasonable fines, assessments and late fees upon unit owners, if authorized by the master deed or bylaws, subject to the right of a majority of unit owners to change any such rules.

(d) The maintenance of insurance against loss by fire or other casualties normally covered under broad-form fire and extended coverage insurance policies as written in this State, covering all common elements and all structural portions of the condominium property and the application of the proceeds of any such insurance to restoration of such common elements and structural portions if such restoration shall otherwise be required under the provisions of this act or the master deed or bylaws.

(e) The maintenance of insurance against liability for personal injury and death for accidents occurring within the common elements whether limited or general and the defense of any actions brought by reason of injury or death to person, or damage to property occurring within such common elements and not arising by reason of any act or negligence of any individual unit owner.

(f) The master deed or bylaws may require the association to protect blanket mortgages, or unit owners and their mortgagees, as their respective interest may appear, under the policies of insurance provided under clauses (d) and (e) of this section, or against such risks with respect to any or all units, and may permit the assessment and collection from a unit owner of specific charges for insurance coverage applicable to his unit.

(g) The maintenance of accounting records, in accordance with generally accepted accounting principles, open to inspection at reasonable times by unit owners. Such records shall include:

(i) A record of all receipts and expenditures.

(ii) 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.

(h) Nothing herein shall preclude any unit owner or other person having an insurable interest from obtaining insurance at his own expense and for his own benefit against any risk whether or not covered by insurance maintained by the association.

(i) Such other duties as may be set forth in the master deed or bylaws.

(j) An association shall exercise its powers and discharge its functions in a manner that protects and furthers or is not inconsistent with the health, safety and general welfare of the residents of the community.

(k) An association shall provide a fair and efficient procedure for the resolution of housing-related disputes between individual unit owners and the association, and between unit owners, which shall be readily available as an alternative to litigation. A person other than an officer of the association, a member of the governing board or a unit owner involved in the dispute shall be made available to resolve the dispute. A unit owner may notify the Commissioner of Community Affairs if an association does not comply with this subsection. The commissioner shall have the power to order the association to provide a fair and efficient procedure for the resolution of disputes.

L.1969,c.257,s.14; amended 1995, c.313, s.1; 1996, c.79, s.2.

46:8B-15 Powers of association.

15. Subject to the provisions of the master deed, the bylaws, rules and regulations and the provisions of this act or other applicable law, the association shall have the following powers:

(a) Whether or not incorporated, the association shall be an entity which shall act through its officers and may enter into contracts, bring suit and be sued. If the association is not incorporated, it may be deemed to be an entity existing pursuant to this act and a

majority of the members of the governing board or of the association, as the case may be, shall constitute a quorum for the transaction of business. Process may be served upon the association by serving any officer of the association or by serving the agent designated for service of process. Service of process upon the association shall not constitute service of process upon any individual unit owner.

- (b) The association shall have access to each unit from time to time during reasonable hours as may be necessary for the maintenance, repair or replacement of any common elements therein or accessible therefrom or for making emergency repairs necessary to prevent damage to common elements or to any other unit or units. The association may charge the unit owner for the repair of any common element damaged by the unit owner or his tenant.
- (c) The association may purchase units in the condominium and otherwise acquire, hold, lease, mortgage and convey the same. It may also lease or license the use of common elements in a manner not inconsistent with the rights of unit owners.
- (d) The association may acquire or enter into agreements whereby it acquires leaseholds, memberships or other possessory or use interests in lands or facilities including, but not limited to country clubs, golf courses, marinas and other recreational facilities, whether or not contiguous to the condominium property, intended to provide for the enjoyment, recreation or other use or benefit of the unit owners. If fully described in the master deed or bylaws, the fees, costs and expenses of acquiring, maintaining, operating, repairing and replacing any such memberships, interests and facilities shall be common expenses. If not so described in the master deed or bylaws as originally recorded, no such membership interest or facility shall be acquired except pursuant to amendment of or supplement to the master deed or bylaws duly adopted as provided therein and in this act. In the absence of such amendment or supplement, if some but not all unit owners desire any such acquisition and agree to assume among themselves all costs of acquisition, maintenance, operation, repair and replacement thereof, the association may acquire or enter into an agreement to acquire the same as limited common elements appurtenant only to the units of those unit owners who have agreed to bear the costs and expenses thereof. Such costs and expenses shall be assessed against and collected from the agreeing unit owners in the proportions in which they share as among themselves in the common expenses in the absence of some other unanimous agreement among themselves. No other unit owner shall be charged with any such cost or expense; provided, however, that nothing herein shall preclude the extension of the interests in such limited common elements to additional unit owners by subsequent agreement with all those unit owners then having an interest in such limited common elements.
- (e) The association may levy and collect assessments duly made by the association for a share of common expenses or otherwise, including any other moneys duly owed the association, upon proper notice to the appropriate unit owner, together with interest

thereon, late fees and reasonable attorneys' fees, if authorized by the master deed or bylaws.

All funds collected by an association shall be maintained separately in the association's name. For investment purposes only, reserve funds may be commingled with operating funds of the association. Commingled operating and reserve funds shall be accounted for separately, and a commingled account shall not, at any time, be less than the amount identified as reserve funds. A manager or business entity managing a condominium, or an agent, employee, officer, or director of an association, shall not commingle any association funds with his or her funds or with the funds of any other condominium association or the funds of another association as defined in section 3 of P.L.1977, c.419 (C.45:22A-23).

If authorized by the master deed or bylaws, the association may levy and collect a capital contribution, membership fee or other charge upon the initial sale or subsequent resale of a unit, which collection shall be earmarked for the purpose of maintenance of or improvements to common elements to defray common expenses or otherwise, provided that such charge shall not exceed nine times the amount of the most recent monthly common expense assessment for that unit.

(f) If authorized by the master deed or bylaws, the association may impose reasonable fines upon unit owners for failure to comply with provisions of the master deed, bylaws or rules and regulations, subject to the following provisions:

A fine for a violation or a continuing violation of the master deed, bylaws or rules and regulations shall not exceed the maximum monetary penalty permitted to be imposed for a violation or a continuing violation under section 19 of the "Hotel and Multiple Dwelling Law," P.L.1967, c.76 (C.55:13A-19).

On roads or streets with respect to which Title 39 of the Revised Statutes is in effect under section 1 of P.L.1945, c.284 (C.39:5A-1), an association may not impose fines for moving automobile violations.

A fine shall not be imposed unless the unit owner is given written notice of the action taken and of the alleged basis for the action, and is advised of the right to participate in a dispute resolution procedure in accordance with subsection (k) of section 14 of P.L.1969, c.257 (C.46:8B-14). A unit owner who does not believe that the dispute resolution procedure has satisfactorily resolved the matter shall not be prevented from seeking a judicial remedy in a court of competent jurisdiction.

(g) Such other powers as may be set forth in the master deed or bylaws, if not prohibited by P.L.1969, c.257 (C.46:8B-1 et seq.) or any other law of this State.

L.1969, c.257, s.15; amended 1996, c.79, s.3; 2007, c.165, s.1.

## Appendix G – Virginia

§ 55-79.53. Compliance with condominium instruments.

A. The declarant, every unit owner, and all those entitled to occupy a unit shall comply with all lawful provisions of this chapter and all provisions of the condominium instruments. Any lack of such compliance shall be grounds for an action or suit to recover sums due, for damages or injunctive relief, or for any other remedy available at law or in equity, maintainable by the unit owners' association, or by its executive organ or any managing agent on behalf of such association, or, in any proper case, by one or more aggrieved unit owners on their own behalf or as a class action. A unit owners' association shall have standing to sue in its own name for any claims or actions related to the common elements as provided in subsection B of § 55-79.80. The prevailing party shall be entitled to recover reasonable attorneys' fees and costs expended in the matter.

B. The condominium instruments may provide for arbitration of disputes or other means of alternative dispute resolution. Any such arbitration held in accordance with this subsection shall be consistent with the provisions of this chapter and Chapter 21 (§ 8.01-577 et seq.) of Title 8.01. The place of any such arbitration or alternative dispute resolution shall be in the county or city in which the condominium is located, or as mutually agreed by the parties.

(1974, c. 416; 1975, c. 415; 1993, c. 667; 1996, c. 977.)

Title 8.1, Chapter 21

§ 8.01-577. Submission of controversy; agreement to arbitrate; condition precedent to action.

A. Persons desiring to end any controversy, whether there is a suit pending therefor or not, may submit the same to arbitration, and agree that such submission may be entered of record in any court. Upon proof of such agreement out of court, or by consent of the parties given in court in person or by counsel, it shall be entered in the proceedings of such court. Thereupon a rule shall be made, that the parties shall submit to the award which shall be made in accordance with such agreement and the provisions of this chapter.

B. Neither party shall have the right to revoke an agreement to arbitrate except on a ground which would be good for revoking or annulling other agreements. Submission of any claim or controversy to arbitration pursuant to such agreement shall be a condition precedent to institution of suit or action thereon, and the agreement to arbitrate shall be enforceable, unless the agreement also provides that submission to arbitration shall not be a condition precedent to suit or action.

(Code 1950, § 8-503; 1968, c. 244; 1977, c. 617; 1983, c. 485; 1986, c. 614.)

§§ 8.01-578. through 8.01-580.

Repealed by Acts 1986, c. 614.

§ 8.01-581. Fiduciary may submit to arbitration.

Any personal representative of a decedent, fiduciary of a person under a disability, or other fiduciary may submit to arbitration any suit or matter of controversy touching the estate or property of such decedent, or person under a disability or in respect to which he is trustee. And any submission so made in good faith, and the award made thereupon, shall be binding and entered as the judgment of a court, if so required by the agreement, in the same manner as other submissions and awards. No such fiduciary shall be responsible for any loss sustained by an award adverse to the interests of the person under a disability or beneficiary under any such trust, unless it was caused by his fault or neglect.

(Code 1950, § 8-507; 1977, c. 617.)

§ 8.01-581.01. Validity of arbitration agreement.

A written agreement to submit any existing controversy to arbitration or a provision in a written contract to submit to arbitration any controversy thereafter arising between the parties is valid, enforceable and irrevocable, except upon such grounds as exist at law or in equity for the revocation of any contract. This article also applies to arbitration agreements between employers and employees or between their respective representatives unless otherwise provided in the agreement; provided, however, that nothing in this chapter shall be construed to create any right to arbitration with respect to any controversy regarding the employment or terms and conditions of employment of any officer or employee of the Commonwealth.

(1986, c. 614.)

§ 8.01-581.02. Proceedings to compel or stay arbitration.

A. On application of a party showing an agreement described in § [8.01-581.01](#), and the opposing party's refusal to arbitrate, the court shall order the parties to proceed with arbitration. However, if the opposing party denies the existence of the agreement to arbitrate, the court shall proceed summarily to the determination of the issue of the existence of an agreement and shall order arbitration only if found for the moving party.

B. On application, the court may stay an arbitration proceeding commenced or threatened on a showing that there is no agreement to arbitrate. Such an issue, when in substantial and bona fide dispute, shall be forthwith and summarily tried and the stay ordered if found for the moving party. If found for the opposing party, the court shall order the parties to proceed to arbitration.

C. If an issue referable to arbitration under the alleged agreement is involved in an action or proceeding pending in a court having jurisdiction to hear applications under subsection A of this section, the application shall be made therein. Otherwise, subject to § [8.01-581.015](#), the application may be made in any court of competent jurisdiction.

D. Any action or proceeding involving an issue subject to arbitration shall be stayed if an order for arbitration or an application therefor has been made under this section. However, if the issue is severable, the stay may be with respect thereto only. When the application is made in such action or proceeding, the order for arbitration shall include the stay.

E. An order for arbitration shall not be refused on the ground that the claim in issue lacks merit or bona fides or because any fault or grounds for the claim sought to be arbitrated have not been shown.

(1986, c. 614.)

§ 8.01-581.03. Appointment of arbitrators by court; powers of arbitrators.

If the arbitration agreement provides a method of appointment of arbitrators, this method shall be followed. In the absence thereof, or if the agreed method fails or for any reason cannot be followed, or when an arbitrator appointed fails or is unable to act and his successor has not been duly appointed, the court on application of a party shall appoint one or more arbitrators. An arbitrator so appointed has all the powers of one specifically named in the agreement.

The powers of the arbitrators may be exercised by a majority, unless otherwise provided by the agreement or by this article.

(1986, c. 614.)

§ 8.01-581.04. Hearing.

Unless otherwise provided by the agreement:

1. The arbitrators shall appoint a time and place for the hearing and cause notification to the parties to be served personally or by registered mail not less than five days before the hearing. Appearance at the hearing waives such notice. The arbitrators may adjourn the hearing from time to time as necessary and, on request of a party for good cause, or upon their own motion may postpone the hearing to a time not later than the date fixed by the agreement for making the award unless the parties consent to a later date. The arbitrators may hear and determine the controversy upon the evidence produced notwithstanding the failure of a party duly notified to appear. The court on application may direct the arbitrators to proceed promptly with the hearing and determination of the controversy.
2. The parties are entitled to be heard, to present evidence material to the controversy and to cross-examine witnesses appearing at the hearing.
3. The hearing shall be conducted by all the arbitrators, but a majority may determine any question and render a final award. If, during the course of the hearing, an arbitrator for any reason ceases to act, the remaining arbitrator or arbitrators appointed to act as neutrals may continue with the hearing and determination of the controversy.

(1986, c. 614.)

§ 8.01-581.05. Representation by attorney.

A party has the right to be represented by an attorney at any proceeding or hearing under this article. A waiver thereof prior to the proceeding or hearing is ineffective.

(1986, c. 614.)

§ 8.01-581.06. Witnesses, subpoenas, depositions.

The arbitrators may issue subpoenas for the attendance of witnesses and for the production of books, records, documents and other evidence, and shall have the power to administer oaths. Subpoenas so issued shall be served, and upon application to the court by a party or the arbitrators, enforced, in the manner provided by law for the service and enforcement of subpoenas in a civil action. All provisions of law compelling a person under subpoena to testify are applicable.

On application of a party and for use as evidence, the arbitrators may permit a deposition to be taken of a witness who cannot be subpoenaed or is unable to attend the hearing, in the manner and upon the terms designated by the arbitrators.

Fees for attendance as a witness shall be the same as for a witness in the circuit court.

(1986, c. 614.)

§ 8.01-581.07. Award; fees and expenses to be fixed.

The award shall be in writing and signed by the arbitrators joining in the award. The arbitrators shall deliver a copy to each party personally or by registered mail, or as provided in the agreement.

An award shall be made within the time fixed therefor by the agreement or, if not so fixed, within such time as the court orders on application of a party. The parties may extend the time in writing either before or after the expiration thereof. A party waives the objection that an award was not made within the time required unless he notifies the arbitrators of his objection prior to the delivery of the award to him. Unless otherwise provided in the agreement to arbitrate, the arbitrators' expenses and fees incurred in the conduct of the arbitration, and all other expenses, not including counsel fees, shall be paid as provided in the award.

(1986, c. 614.)

§ 8.01-581.08. Change of award by arbitrators.

On application of a party or, if an application to the court is pending under §§ [8.01-581.09](#), [8.01-581.010](#) or § [8.01-581.011](#), on submission to the arbitrators by the court under such conditions as the court may order, the arbitrators may modify or correct the award upon the grounds stated in subdivisions 1 and 3 of § [8.01-581.011](#), or for the purpose of clarifying the award. The application shall be made within twenty days after delivery of the award to the applicant. Written notice thereof shall be given forthwith to the opposing party, stating that he must serve his objections thereto, if any, within ten days from the notice. The award as modified or corrected is subject to the provisions of §§ [8.01-581.09](#), [8.01-581.010](#) or § [8.01-581.011](#).

(1986, c. 614.)

§ 8.01-581.09. Confirmation of an award.

Upon application of a party any time after an award is made, the court shall confirm an award, unless within the time limits hereinafter imposed grounds are urged for vacating or modifying or

correcting the award, in which case the court shall proceed as provided in §§ [8.01-581.010](#) and [8.01-581.011](#).

(1986, c. 614; 1998, c. [303](#).)

§ 8.01-581.010. Vacating an award.

Upon application of a party, the court shall vacate an award where:

1. The award was procured by corruption, fraud or other undue means;
2. There was evident partiality by an arbitrator appointed as a neutral, corruption in any of the arbitrators, or misconduct prejudicing the rights of any party;
3. The arbitrators exceeded their powers;
4. The arbitrators refused to postpone the hearing upon sufficient cause being shown therefor or refused to hear evidence material to the controversy or otherwise so conducted the hearing, contrary to the provisions of § [8.01-581.04](#), in such a way as to substantially prejudice the rights of a party; or
5. There was no arbitration agreement and the issue was not adversely determined in proceedings under § [8.01-581.02](#) and the party did not participate in the arbitration hearing without raising the objection.

The fact that the relief was such that it could not or would not be granted by a court of law or equity is not grounds for vacating or refusing to confirm the award.

An application under this section shall be made within ninety days after delivery of a copy of the award to the applicant, except that, if predicated upon corruption, fraud or other undue means, it shall be made within ninety days after such grounds are known or reasonably should have been known. An application shall be made by filing a petition with the appropriate court within the prescribed time limits of this section, or by raising reasons supporting vacation in response to another party's petition to confirm the award, provided that such response is filed within the prescribed time limits of this section.

In vacating the award on grounds other than that stated in subdivision 5, the court may order a rehearing before new arbitrators chosen as provided in the agreement, or in the absence thereof, by the court in accordance with § [8.01-581.03](#). If the award is vacated on grounds set forth in subdivisions 3 and 4 the court may order a rehearing before the arbitrators who made the award or their successors appointed in accordance with § [8.01-581.03](#). The time within which the agreement requires the award to be made is applicable to the rehearing and commences from the date of the order.

If the application to vacate is denied and no motion to modify or correct the award is pending, the court shall confirm the award.

(1986, c. 614; 1998, c. [303](#).)

§ 8.01-581.011. Modification or correction of award.

Upon application made within ninety days after delivery of a copy of the award to the applicant, the court shall modify or correct the award where:

1. There was an evident miscalculation of figures or an evident mistake in the description of any person, thing or property referred to in the award;
2. The arbitrators have awarded upon a matter not submitted to them and the award may be corrected without affecting the merits of the decision upon the issues submitted; or
3. The award is imperfect in a matter of form, not affecting the merits of the controversy.

If the application is granted, the court shall modify and correct the award so as to effect its intent and shall confirm the award as so modified and corrected. Otherwise, the court shall confirm the award as made.

An application to modify or correct an award may be joined in the alternative with an application to vacate the award.

§ 8.01-581.012. Judgment or decree on award.

Upon granting an order confirming, modifying or correcting an award, a judgment or decree shall be entered in conformity therewith and be docketed and enforced as any other judgment or decree. Costs of the application and of the proceedings subsequent thereto, and disbursements may be awarded by the court.

§ 8.01-581.013. Applications to court.

An application to the court under this article shall be by motion and shall be heard in the manner and upon the notice provided by law or rule of court for the making and hearing of motions. Unless the parties have agreed otherwise, notice of an initial application for an order shall be served in the manner provided by law for the service of a summons in an action.

§ 8.01-581.014. Court; jurisdiction.

The term "court" means a court of this Commonwealth having jurisdiction over the subject matter of the controversy.

§ 8.01-581.015. Venue.

Except as provided in subsection B of § [8.01-262.1](#), an initial application shall be made to the court of the county or city in which the agreement provides the arbitration hearing shall be held or, if the hearing has been held, in the county or city in which it was held. Otherwise, venue of the application shall be as provided in Chapter 5 (§ [8.01-257](#) et seq.) of this title. All subsequent applications shall be made to the court hearing the initial application unless the court otherwise directs.

§ 8.01-581.016. Appeals.

An appeal may be taken from:

1. An order denying an application to compel arbitration made under § [8.01-581.02](#);
2. An order granting an application to stay arbitration made under subsection B of § [8.01-581.02](#);
3. An order confirming or denying an award;
4. An order modifying or correcting an award;
5. An order vacating an award without directing a rehearing; or
6. A judgment or decree entered pursuant to the provisions of this article.

The appeal shall be taken in the manner and to the same extent as from orders or judgments in a civil action.

#### § 8.01-581.21. Definitions.

As used in this chapter:

"Mediation" means a process in which a mediator facilitates communication between the parties and, without deciding the issues or imposing a solution on the parties, enables them to understand and to reach a mutually agreeable resolution to their dispute.

"Mediation program" means a program through which mediators or mediation is made available and includes the director, agents and employees of the program.

"Mediator" means an impartial third party selected by agreement of the parties to a controversy to assist them in mediation.

(1988, cc. 623, 857; 2002, c. [718](#).)

#### § 8.01-581.22. Confidentiality; exceptions.

All memoranda, work products and other materials contained in the case files of a mediator or mediation program are confidential. Any communication made in or in connection with the mediation, which relates to the controversy being mediated, including screening, intake, and scheduling a mediation, whether made to the mediator, mediation program staff, to a party, or to any other person, is confidential. However, a written mediated agreement signed by the parties shall not be confidential, unless the parties otherwise agree in writing.

Confidential materials and communications are not subject to disclosure in discovery or in any judicial or administrative proceeding except (i) where all parties to the mediation agree, in writing, to waive the confidentiality, (ii) in a subsequent action between the mediator or mediation program and a party to the mediation for damages arising out of the mediation, (iii) statements, memoranda, materials and other tangible evidence, otherwise subject to discovery, which were not prepared specifically for use in and actually used in the mediation, (iv) where a threat to inflict bodily injury is made, (v) where communications are intentionally used to plan, attempt to commit, or commit a crime or conceal an ongoing crime, (vi) where an ethics complaint is made against the mediator by a party to the mediation to the extent necessary for the complainant to prove misconduct and the mediator to defend against such complaint, (vii) where communications are sought or offered to prove or disprove a claim or complaint of misconduct or malpractice filed against a party's legal representative based on conduct occurring during a mediation, (viii) where communications are sought or offered to prove or disprove any of the grounds listed in § [8.01-581.26](#) in a proceeding to vacate a mediated

agreement, or (ix) as provided by law or rule. The use of attorney work product in a mediation shall not result in a waiver of the attorney work product privilege.

Notwithstanding the provisions of this section, in any case where the dispute involves support of the minor children of the parties, financial information, including information contained in the child support guidelines worksheet, and written reasons for any deviation from the guidelines shall be disclosed to each party and the court for the purpose of computing a basic child support amount pursuant to § [20-108.2](#).

(1988, cc. 623, 857; 2002, c. [718](#).)

#### § 8.01-581.23. Civil immunity.

When a mediation is provided by a mediator who is certified pursuant to guidelines promulgated by the Judicial Council of Virginia, or who is trained and serves as a mediator through the statewide mediation program established pursuant to § [2.2-1001\(2\)](#), then that mediator, mediation programs for which that mediator is providing services, and a mediator co-mediating with that mediator shall be immune from civil liability for, or resulting from, any act or omission done or made while engaged in efforts to assist or conduct a mediation, unless the act or omission was made or done in bad faith, with malicious intent or in a manner exhibiting a willful, wanton disregard of the rights, safety or property of another. This language is not intended to abrogate any other immunity that may be applicable to a mediator.

(1988, cc. 623, 857; 2002, c. [718](#).)

#### § 8.01-581.24. Standards and duties of mediators; confidentiality; liability.

A mediator selected to conduct a mediation under this chapter may encourage and assist the parties in reaching a resolution of their dispute, but may not compel or coerce the parties into entering into a settlement agreement. A mediator has an obligation to remain impartial and free from conflicts of interest in each case, and to decline to participate further in a case should such partiality or conflict arise. Unless expressly authorized by the disclosing party, the mediator may not disclose to either party information relating to the subject matter of the mediation provided to him in confidence by the other. A mediator shall not disclose information exchanged or observations regarding the conduct and demeanor of the parties and their counsel during the mediation, unless the parties otherwise agree.

However, where the dispute involves the support of minor children of the parties, the parties shall disclose to each other and to the mediator the information to be used in completing the child support guidelines worksheet required by § [20-108.2](#). The guidelines computations and any reasons for deviation shall be incorporated in any written agreement by the parties.

(2002, c. [718](#).)

#### § 8.01-581.25. Effect of written settlement agreement.

If the parties reach a settlement and execute a written agreement disposing of the dispute, the agreement is enforceable in the same manner as any other written contract. If the mediation involves a case that is filed in court, upon request of all parties and consistent with law and public policy, the court shall incorporate the written agreement into the terms of its final decree

disposing of a case. In cases in which the dispute involves support for the minor children of the parties, an order incorporating a written agreement shall also include the child support guidelines worksheet and, if applicable, the written reasons for any deviation from the guidelines. The child support guidelines worksheet shall be attached to the order.

(2002, c. [718](#).)

§ 8.01-581.26. Vacating orders and agreements.

Upon the filing of an independent action by a party, the court shall vacate a mediated agreement reached in a mediation pursuant to this chapter, or vacate an order incorporating or resulting from such agreement, where:

1. The agreement was procured by fraud or duress, or is unconscionable;
2. If property or financial matters in domestic relations cases involving divorce, property, support or the welfare of a child are in dispute, the parties failed to provide substantial full disclosure of all relevant property and financial information; or
3. There was evident partiality or misconduct by the mediator, prejudicing the rights of any party.

For purposes of this section, "misconduct" includes failure of the mediator to inform the parties at the commencement of the mediation process that: (i) the mediator does not provide legal advice, (ii) any mediated agreement may affect the legal rights of the parties, (iii) each party to the mediation has the opportunity to consult with independent legal counsel at any time and is encouraged to do so, and (iv) each party to the mediation should have any draft agreement reviewed by independent counsel prior to signing the agreement.

(2002, c. [718](#).)