

INTERNAL DISPUTE RESOLUTION

Attorney-Client	Liability Protections	IDR	ADR	Legal Issues	Security
Harassment	Small Claims Court	Attorneys' Fees	Artificial Intelligence	Neighbor-to-Neighbor Disputes	

Meet & Confer Policy

Associations must provide a "fair, reasonable and expeditious" procedure for resolving disputes between the association and its members. The process is referred to as "Internal Dispute Resolution" (IDR) or "meet and confer." The elements required by the Davis-Stirling Act ([Civ. Code § 5910](#); [Civ. Code § 5915](#)) include the following:

- *Request in Writing.* Either party to the dispute may invoke the procedure. A request to invoke the procedure must be in writing.
- *Prompt Deadlines.* The parties shall meet promptly at a mutually convenient time and place. The procedure shall provide for prompt deadlines and state the maximum time for the association to act on a request invoking the procedure.
- *Good Faith Effort.* The parties shall explain their positions to each other and confer in [good faith](#) to resolve the dispute.
- *Invoked by Owner.* If a member invokes the procedure, the association must participate.
- *Invoked by Association.* If the association invokes the procedure, the member may choose not to participate. 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 board.
- *Designate a Director.* The board shall designate a director to represent the board to meet with the person. The Board is not limited to one; it can designate more than one director to meet with the person.
- *Resolution in Writing.* A resolution agreed to by the parties must be memorialized in writing and signed by the parties, including the board designee, on behalf of the association.



- *Resolution Enforceable.* A written resolution, signed by both parties, of a dispute pursuant to the procedure that does not conflict with the law or the governing documents, binds the association and is judicially enforceable. A written agreement, signed by both parties, reached pursuant to the procedure that does not conflict with the law or the governing documents, binds the parties and is judicially enforceable.
- *Attorney Allowed.* The procedure shall provide a means by which the member and the association may explain their positions. The member and association may be assisted by an attorney or another person in explaining their positions at their own cost.
- *No Fee Allowed.* The association may not charge members a fee to participate in the process.
- *Annual Notice.* Associations must annually notify their members of IDR and ADR dispute resolution procedures. ([Civ. Code § 5920](#); [§ 5965](#))

CONTACT US for an IDR Policy

Attorneys Can Participate in IDR

A change in the Internal Dispute Resolution statutes that took effect January 1, 2015, allows members to bring an attorney or other person to an IDR meeting with a board member. ([Civ. Code § 5910\(b\)](#); [§ 5915\(b\)\(4\)](#)) This change in the law creates risk for associations. The change makes no provision that owners notify the board that they intend to bring an attorney, i.e., they can ambush the board member designated to meet with them. Moreover, there is no mediation privilege. That means that anything said in IDR is not confidential and can be used against either party in subsequent litigation. If a homeowner brings an attorney to an IDR session, the meeting should immediately be rescheduled to a later date when the association's legal counsel can attend. The homeowner has no basis to complain about the postponement since California's Rules of Professional Conduct prohibit attorneys from communicating with parties without their legal counsel present. ([Rule 2-100\(A\)](#))

Recommendation: Whenever a homeowner requests IDR, send a letter confirming the request and setting a date for the meeting. The letter should include language asking for advance notice if the owner intends to bring a lawyer to the meeting. Include a statement that bringing an attorney without prior notice will result in rescheduling the meeting so the association's legal counsel can attend.

Recording the Meeting

The general rule is not to record IDR meetings. The meeting is confidential and is being held to attempt to settle a disputed matter. One party demanding to record the meeting would inhibit frank and open discussion of the disputed matter. A "meet and confer" meeting is not open to the public. It is a private meeting and can be recorded only if all parties agree to it. Any surreptitious recording of the meeting would likely violate [Penal Code § 632](#).



No Litigation During IDR

An association may not file a civil action regarding a dispute in which the member has requested dispute resolution

unless the association has complied with [Civil Code § 5910](#) by engaging in [good faith](#) in the internal dispute resolution procedures after a member invokes those procedures. ([Civ. Code § 5910.1](#))

IDR as a Form of Harassment

Once an IDR has been held on an issue, boards are not required to hold repeated requests by the same owner on the same issue. A disgruntled homeowner sometimes makes repeated requests to harass boards by engaging directors in endless rounds of IDR on the same issue. Once the matter has been addressed and documented, boards can decline any further requests on that issue. Also, the issue should be such that it could lead to litigation. It should not be petty disagreements, such as how the board conducts its meetings, or the kind of flowers approved by the board, or hurt feelings when a person is not appointed to a committee. Opinions on such matters can be expressed by owners during the [open forum](#) portion of a board meeting.

Election Disqualifications

If a person is nominated to run for the board, but the board or the inspector of elections determines the person is [not qualified to serve on the board](#), the person's name cannot go on the ballot. However, the associations must first give the person an opportunity to engage in internal dispute resolution. ([Civ. Code § 5105\(e\)](#))

[ADR Comparison](#). See [Arbitration-Mediation](#).

ASSISTANCE: Associations needing legal assistance can [contact us](#). To stay current with community association issues, subscribe to the [Davis-Stirling Newsletter](#).



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