

**POLICY  
OF PARK EAST SQUARE HOMEOWNERS ASSOCIATION, INC.  
REGARDING ALTERNATIVE DISPUTE RESOLUTION (ADR)**

**SUBJECT:** Adoption of a procedure regarding alternative dispute resolution.

**PURPOSE:** To adopt a standard procedure to be followed for alternative dispute resolution.

**AUTHORITY:** The Declaration, Articles of Incorporation, and Bylaws of the Association and Colorado law.

**EFFECTIVE DATE:** January 10, 2017

**RESOLUTION:** The Association hereby adopts the following Policy and Procedures:

1. General. It is the general policy of the Association to encourage the use of alternative dispute resolution to resolve disputes involving the Association and an Owner. Alternative dispute resolution ("ADR") is defined as a procedure for settling a dispute by means other than litigation, such as binding arbitration, non-binding arbitration, or mediation.
2. General Policy. In the event of any dispute between the Association and an Owner, except for those exempted claims defined, the Association and the Owner shall agree to resolve the dispute using the procedures set forth below prior to filing suit in any court or initiating proceedings before any administrative tribunal.
3. Exempt Claims. The following claims shall be exempt from the provisions of this Policy:
  - (a) Any action by the Association against an Owner to collect assessments or other sums due to the Association, including foreclosure proceeding; and
  - (b) Any action by the Association to enforce any provisions of the Association's Declaration, Bylaws, rules and regulations, or other governing document; and
  - (c) Any claim of the Association that, if not pursued by the filing of a lawsuit, would be deemed barred due to the applicable statute of limitations.
4. Procedure for All Other Claims. All claims other than Exempt Claims shall be resolved using the following procedures in lieu of litigation:

- (a) The Association or any Owner having a claim ("Claimant") against an Owner or the Association, respectively ("Respondent"), other than an Exempt claim, shall notify each Respondent in writing of the claim ("Notice"), stating (i) the nature of the claim, including the date, time, location, persons involved, and Respondent's role in the claim, (ii) the basis of the claim (i.e. the provisions of this Declaration, the Bylaws, the Articles, Rules or Regulations or other authority out of which the claim arises); (iii) what Claimant wants Respondent to do or not do to resolve the claim; and (iv) that Claimant wishes to resolve the claim by mutual agreement with Respondent, and is willing to meet in person with Respondent at a mutually agreeable time and place to discuss in good faith ways to resolve the claim.
- (b) Negotiation. The parties shall make every reasonable effort to meet in person to resolve the claim by good faith negotiation.
- (c) Mediation.
- (i) If the parties do not resolve the claim through negotiation within 20 days of the date of the Notice (or within such other period as may be agreed upon by the parties) ("Termination of Negotiations"), Claimant shall have 30 additional days to submit the claim to mediation by an independent mediation service agreed upon by the parties.
- (ii) If Claimant does not submit the claim to mediation within 30 days after Termination of Negotiations, Claimant shall be deemed to have waived the claim, and Respondent shall be released and discharged from any and all liability to Claimant on account of the claim.
- (iii) If the parties do not settle the claim within 45 days after submission of the matter to the mediation process, or within such time as determined reasonable or appropriate by the mediator, the mediator shall issue a notice of termination of the mediation proceedings ("Termination of Mediation"). The Termination of Mediation notice shall set forth when and where the parties met, that the parties are at an impasse, and the date that mediation was terminated.
- (iv) Within 10 days of the Termination of Mediation, the parties shall again attempt to resolve the matter informally through negotiation.
- (d) Arbitration.

- (i) If the parties do not resolve the claim through negotiation, as provided for above, within 20 days of the Termination of Mediation, the Claimant shall then have 15 additional days to submit the claim to binding arbitration in accordance with the appropriate rules of the American Arbitration Association, or the claim shall be deemed abandoned, and Respondent shall be released and discharged from any and all liability to Claimant arising out of the claim. However, nothing herein shall release or discharge Respondent from any liability to anyone not a party to the proceedings.
  - (ii) This Policy is an agreement of the Association and Owners to arbitrate all claims except Exempt claims and is specifically enforceable under the applicable arbitration law of the State of Colorado. If specifically agreed to by both parties to the arbitration, the arbitration shall be final and binding and judgment may be entered upon it in any court of competent jurisdiction to the fullest extent permitted under the laws of the State of Colorado.
5. Costs. If the claims are resolved through negotiation and/or mediation as provided above, each party shall bear all of its own costs incurred in resolving the claim, and each party shall bear its own attorney fees unless the parties otherwise agree. If the claims are not resolved through negotiation or mediation as provided above and the claims go to litigation, the prevailing party shall receive as a part of its award from the opposing party all of its costs, including attorney fees, costs for other representatives in resolving such claim, and any expenses incurred as a result of the dispute resolution procedures of this Policy.
  6. Failure to Comply with Settlement. If the parties resolve any claim through negotiation or mediation as set forth above, and the other party fails to abide by the terms of such agreement or award, then the other party may file suit or initiate administrative proceedings to enforce such agreement or award without need to comply with the provisions of this Policy. In such event, the party taking action to enforce the agreement or award shall be entitled to recover from the non-complying party all costs incurred in enforcing such agreement or award, including without limitation, attorney fees and costs.
  7. Definitions. Unless otherwise defined in this Policy, initially capitalized or terms defined in the Declaration shall have the same meaning herein.
  8. Supplement to Law. The provisions of this Policy shall be in addition to and in supplement of the terms and provisions of the Declaration and the law of the State of Colorado governing the community.
  9. Deviations. The Board may deviate from the procedures set forth in this Policy if in its sole discretion such deviation is reasonable under the circumstances.

10. Amendment. This Policy may be amended from time to time by the Board of Directors.

**PRESIDENT'S**

**CERTIFICATION:** The undersigned, being the President of Park East Square Homeowners Association, Inc. certifies that the foregoing Policy was approved and adopted by the Board of Directors of the Association, at a duly called and held meeting of the Board of Directors of the Association on January 10<sup>th</sup> 2017 witness thereof, the undersigned has subscribed his/her name.

**Park East Square Homeowners  
Association, Inc., a Colorado nonprofit  
corporation**

By: Lois E Bennett  
Its: President