

POND MEADOWS CONDOMINIUM ASSOCIATION, INC.
ADR Committee
Purposes and Procedures
(Resolution Adopted November 5, 2013)(Revised December 9, 2013)

WHEREAS, by Master Deed dated July 11, 1985,, in the Bergen County Register’s Office, the above mentioned residential community and Condominium Association was established (hereinafter the “Condominium”) upon certain lands in the City of Mahwah, County of Bergen and State of New Jersey, all pursuant to N.J.S.A. 46:8B-1, et seq.; and

WHEREAS Section 46:8B-14(K) of the New Jersey Condominium Act, as amended requires the Association to provide a fair and efficient procedure for the resolution of housing, related disputes between individual unit owners and the association, and between unit owners, as an alternative to litigation, hereinafter referred to as “ADR PROCEDURES”; and,

WHEREAS, the Governing Documents empower the Board with all powers and duties necessary for the proper conduct and administration of the affairs of the Association and operation and maintenance of the Development; and empower it do or cause to be done all such other lawful acts and things are not prohibited by law, or by the Governing Documents; and

WHEREAS, the Governing Documents authorize the board in administering the affairs of the Association to enforce and determine ADR [Alternate Dispute Resolution] and restrictions covering the use and occupancy of the Development; and

WHEREAS, it is the intent of the Governing Board to establish procedures consistent with the principles of due process in the event the Board or ADR [Alternate Dispute Resolution] Committee must take action to enforce the provisions of the Governing Documents;

WHEREAS, for the benefit of the Association and of the individual unit owners, the Board deems it necessary and desirable to establish various procedures for dispute resolution in circumstances, where there is a dispute between unit owners or between the Association and unit owners regarding compliance, with the provisions of the Articles of Incorporation, the Master Deed, the By-Laws and Rules and Regulations of the Association, thereby attempting to minimize the necessity for judicial intervention and litigation; and

WHEREAS, in accordance with the mandates of New Jersey Law, the Board deems it necessary to adopt a uniform procedure for the resolution of disputes between unit owners and the Association, and between unit owners, through a process of negotiation, mediation and non-binding arbitration prior to the institution of litigation.

WHEREAS, if necessary as a result of not having volunteers service or conflicts of interest on the Committee to serve as Hearing Offices that the Board will utilize the mediation referral services provided by the Community Association’s Institute of New Jersey. Any individual unit owner requesting an Alternate Dispute Resolution, will utilize the request form provided by the Community Association’s Institute and will be responsible for paying the mediation fee, in accordance with CAI’s guidelines and the cost of such service be paid for equally by the Association and owner requesting an ADR Hearing;

NOW, THEREFORE, be it **RESOLVED** that the following resolution process be adopted to provide for due process:

I. **DEFINITIONS:**

This resolution will incorporate by reference all definitions contained in the enabling statute, applicable rules and regulations promulgated by the New Jersey Department of Community Affairs, and the Governing Documents, as the case may be. The terms defined below will also be used:

- A. Board means the Board of Trustees.
- B. Association means the Pond Meadows Condominium Association, Inc. which shall be responsible for the administration and management of the Association Property, including but not limited to the conduct of all activities of common interest to the residents of the Development. The Association is a nonprofit corporation, recognized by the laws of New Jersey.
- C. The terms Owner or Unit Owner means the owner or owners of a unit, his family members, guests, tenants, employees and invitees, unless the context expressly indicates otherwise.
- D. Act means any applicable statutory enactment or rule or regulation promulgated thereunder.
- E. Governing Documents means the Master Deed or Declaration, as applicable. Articles of Incorporation, By-Laws and Rules and Regulations of the Association, and any other documents affecting the Development, collectively, as from time to time amended.

II. **PROCEDURES TO RESOLVE QUESTIONS OF COMPLIANCE WITH THE CONDOMINIUM DOCUMENTS**

- A. Informal Actions. If any violation, by its nature, has the capacity for a reasonably immediate cure, an informal request may, *but need not*, be made by any Owner, officer, or agent of the Association so that the Owner may have an opportunity to cease or correct the act or omission which appears to be in violation of the Governing Documents. A copy of such informal request may also be sent to the ADR [Alternate Dispute Resolution] Committee.
- B. Written Complaint. If, after informal notice, effective action is not taken or proves unsuccessful by the subject in violation within a reasonable time or within seven (7) calendar days, whichever is the shorter, any Owner, officer, trustee, or agent of the Association may issue a formal complaint setting forth in precise language the acts or omissions with which the respondent is charged, including dates, places, and persons involved in the violation, and the provisions in the governing documents which the respondent has allegedly breached. Within the complaint, the penalty levied against the respondent shall be set forth in specificity, with the time and date when such penalty shall commence or shall be assessed. A copy of the complaint shall be filed with the ADR Committee upon issuance.
- C. Preliminary Actions. Said complaint shall be withdrawn if the person or persons in violation provide sufficient evidence, in documentary, photographic, affidavit, and other such relevant forms that the alleged violation has been cured within fourteen (14) days of the issuance of the complaint. Any penalty assessed shall be tolled during such fourteen (14) day period, but shall be enforced from the day the complaint is issued should the violation be so not cured or if it cannot be cured because of the nature of the violation.

- D. Service of the Complaint. Service of process shall be made by transmitting a copy of the complaint to the respondent, (1) by personal service or (2) by regular and/or certified mail, return receipt requested, addressed to respondent at the address appearing on the books of the Association. Service by mail will be deemed effective three (3) days after posting in a regular depository of the United States Mail.
- E. Contents of the Complaint. The complaint must contain in clear and concise language the specific allegations of acts or omissions with which respondent is charged, setting forth the times, dates, places, and persons involved, and the specific provisions of the Governing Documents which respondent is alleged to have violated. The complaint should also request the respondent to cease and to desist the alleged violation. The complaint shall also set forth the respondent's right to have the matter heard by the Association's ADR Committee for mediation and the procedure for filing a request for a hearing.
- F. Request for Hearing. Upon the receipt of the complaint, the respondent shall *either* cure the alleged violation as set forth in Paragraph C, *or* request a hearing by the ADR Committee within the same time period (fourteen days). That request shall be made in writing, laying out, with specificity, the factual grounds for respondent's objection to the facts of the complaint, and filed with the Managing Agent by (1) personal service or (2) by regular and/or certified mail, return receipt requested. A copy of the request for a hearing shall be immediately filed with the ADR. As soon thereafter as practicable, the ADR Committee shall establish a time and date for a hearing in consultation with the respondent, memorializing the same in a Notice of Hearing transmitted by any expeditious means to the Association through the property manager and to the respondent.
- G. Commission of the Hearing. The Notice of Hearing shall advise the respondent at least three (3) days *prior* to the hearing of the date, time, and place. The respondent must notify the Committee and the Association through the property manager in writing that respondent will appear at the hearing. **The failure to file a written answer to the complaint or to notify the ADR Committee and the Association through the property manager of an appearance in writing in advance of the hearing will be deemed a default.**
- H. Amended or Supplemental Complaints. At any time prior to the hearing date, the ADR [Alternate Dispute Resolution] Committee may file or permit filing of an amended or supplemental complaint. All parties must be notified in the same manner as required for a complaint, and a new hearing date shall be established after the new notification. If new allegations are presented, the respondent may file a supplemental answer provided for in paragraph II(F).
- I. Discovery. At any time after service of the complaint and prior to the hearing date, either party may request the Board or the Managing Agent to provide the names and addresses of witnesses to be called, and copies of any statements, writings, and investigative reports to be introduced at the hearing.
- J. Challenges to the ADR [Alternate Dispute Resolution] Committee. Each member of the ADR [Alternate Dispute Resolution] must be able to perform in a disinterested and objective manner in consideration of the case before the ADR [Alternate Dispute Resolution] Committee, or must disqualify himself and have it so recorded in the minutes of the ADR [Alternate Dispute Resolution] Committee. Any member of the ADR [Alternate Dispute Resolution] Committee may be challenged by any other member or by the complainant or the respondent for the cause. The Board shall decide the challenge and

all decisions of the Board, in this regard, are final.

- K. Default by Failure to Answer. Respondent must answer the allegations in the complaint within fourteen (14) days of its service upon respondent consistent with the provisions of Paragraph II (F). The failure to file a written answer to the complaint or to notify the ADR [Alternate Dispute Resolution] Committee in writing during said fourteen (14) days will be deemed a default. In the event of a default, the ADR [Alternate Dispute Resolution] Committee will render its decision on the allegations in the complaint and on the facts before it. The respondent may appeal the entry of a default to the board within five (5) business days after receipt of notice of the ADR's recommendation thereof.
- L. The Hearing.
1. The ADR [Alternate Dispute Resolution] Committee shall select a person or a member of the ADR [Alternate Dispute Resolution] Committee to preside as hearing officer to explain the rules and procedures by which the hearing is to be conducted. Generally, any relevant evidence may be admitted and hearsay evidence may be used to supplement or explain other evidence, but will not be sufficient in itself to support a decision. Counsel for the Association may be present at all hearings and may serve as hearing officer.
 2. At the request of either complainant or respondent, or on its own motion, the ADR [Alternate Dispute Resolution] Committee may conduct the hearing in private session.
 3. Each party has the right to:
 - a. make a statement;
 - b. introduce evidence, testimony, and witnesses;
 - c. cross-examine opposing parties and witnesses; and
 - d. rebut evidence and testimony.
 4. Technical rules of evidence of procedures may be relaxed by the hearing officer who, nevertheless, may reserve the right to exclude all irrelevant, immaterial or repetitious evidence. The hearing officer also has the discretion to impose reasonable limits on the time allowed to testify and the number of witnesses.
 5. If the complainant does not appear at the hearing, the complaint will be dismissed with prejudice.
 6. Oral evidence to be of record may be taken only on oath of affirmation administered by the hearing officer .
 7. Whenever the ADR [Alternate Dispute Resolution] Committee has commenced to hear a matter, and a member of the ADR [Alternate Dispute Resolution] Committee withdraws before a decision, the remaining members will continue to hear the case and the President of the Board of

the Association will name a replacement for the withdrawing member of the ADR [Alternate Dispute Resolution] Committee. The replacement to the ADR [Alternate Dispute Resolution] Committee shall make his decision from the existing record.

- M. Decisions. After a hearing on any matter, the ADR [Alternate Dispute Resolution] Committee must issue a written decision or recommendation on the matter within ten (10) calendar days to the Board of Trustees through the property manager for adoption or rejection. To be effective, a decision of the ADR [Alternate Dispute Resolution] Committee must be by a majority vote. Copies of the decision must be delivered to the respondent in the same manner as required in paragraph II(D), promptly after the decision is issued. A summary of the decision may also be published in a Newsletter of the Association, or by similar notice, as soon after the decision is issued as is practicable.

- M. Penalties After Decision. Disciplinary action recommended to the Board by the ADR [Alternate Dispute Resolution] Committee may include the imposition of a fine in accordance with any relevant provisions of the Association's governing documents, including, but not limited to the Master Deed, the By-Laws, and any published policy adopted by the Board, or any compromise achieved, or confirm the fine set forth in the original complaint. Copies of the decision must be delivered to the respondent in the same manner as required in paragraph II (D). A summary of the penalty may be also published in a Newsletter of the Association, or by similar notice, as soon after the decision is issued as practicable.

III. INTERPRETIVE RULINGS

- A. Petitions.
 - 1. Any Owner, officer, trustee, or agent of the Association may petition the ADR [Alternate Dispute Resolution] Committee, during the course of the hearing, for an interpretation of any provision of the Governing Documents directed to the ADR [Alternate Dispute Resolution] Committee at the Managing Agents office.
 - 2. The petition must be legibly written and set forth the language of the provision in question, the reference to that language in the Governing Documents, the issue to be resolved by such a ruling, and the name and address of the petitioner.

IV. APPEALS

- A. Any recommendation or ruling of the ADR [Alternate Dispute Resolution] Committee may be appealed by the respondent to the Board.

- B. All appeal petitions must be submitted to the Board within five (5) days after receipt of a copy of the written recommendation or ruling from the ADR [Alternate Dispute Resolution] Committee. In the event that an appeal petition is not filed within the five (5) day period, the recommendation or ruling of the ADR [Alternate Dispute Resolution] Committee shall be deemed to be final;
- C. Owners must exhaust all remedies provided by this Policy Resolution before resorting to a Court of Law for relief.

V. CONSTRUCTION

- A. “Due Process,” as used in this Resolution, refers to the following basic rights:
 - 1. Respondent will be notified of the alleged violations;
 - 2. Respondent will have an opportunity to be heard at a hearing at which witnesses may appear and may be cross-examined and at which evidence may be introduced;
 - 3. An opportunity to appeal will be available; and
 - 4. Basic principles of fairness will govern.
- B. Any inadvertent omission or failure to follow the procedures for due process in this Policy Resolution will not invalidate the results of any decision or ruling, as long as a prudent and reasonable attempt was made to assure the above basic due process rights.

VI. REFERENCE OF PRONOUNS.

All pronouns refer to the masculine, feminine, neuter, singular and plural as the identity of the person or entities may require.

ADR COMMITTEE

(Judy Kaiser, John Dalenberg, and Shirley Everett)

Procedural Timeline

Days

1 _____ 5 _____ 10 _____ 15 _____ 20 _____ 25 _____ 30 _____

1. **Informal Request**: time for cure, seven (7) days

1 _____ 7 _____

2. **Written Complaint**:

a. **Served** on respondent (service is deemed effective 3 days from mailing)

1 _____ 3 days

b. **Cure**: within fourteen (14) days from service

1 _____ 14 days

c. **Answer and Request for Hearing**: within fourteen (14) from service

1 _____ 14 days

3. **Hearing**:

a. **Schedule of hearing**: (in consultation with respondent as soon after request is received as “practicable”)

b. **Notice of hearing**: written notice served on respondent at least three (3) days prior to hearing

4. **Amended or supplemental complaints or answers**: Any time prior to hearing date (see Paragraph II, H)

5. **Discovery**: Any time prior to hearing date (see Paragraph II, I)

6. **Default**: within fourteen (14) days of the service of complaint (see Paragraph II, K)

1 _____ 14 days

7. Decisions by the ADR Committee: within ten (10) days after the hearing (Paragraph II, M)

1 _____ 10

8. Appeals: within five (5) days after the Board receives the decision of the ADR Committee (Paragraph IV, B)

1 _____ 5

Totals: Answer, Request for hearing, Default Notice of decision Appeal

Complaint 1 _____ **14** **Hearing** 1 _____ **10** **Decision** 1 _____ **5**