

**THE MOUNTAIN OAKS HOMEOWNERS ASSOCIATION**  
**POLICY FOR RESOLUTION OF DISPUTES BETWEEN**  
**THE ASSOCIATION AND HOMEOWNERS**

**November 10, 2016**

Purpose: To foster communication and respect among members, without resorting to more costly legal measures. The following Policy for Resolution of Disputes Between Mountain Oaks Homeowners Association and Homeowners applies to all owners of lots located at Mountain Oaks Subdivision Filing Nos. 1,2,3, & 4 (“Owners”), and is hereby adopted by the Board of Directors of Mountain Oaks Homeowners Association (“MOHA”):

**1. Background.** MOHA believes the cost, complexity, and delay inherent in court proceedings make litigation a particularly costly and inefficient means of resolving neighborhood disagreements.

To preserve relationships in our community that may otherwise be damaged through disputes and adversarial means of resolving them, the Association encourages the use of Alternative Dispute Resolution (ADR), in lieu of litigation.

**2. Definitions.**

a. Arbitration. Process where disputing parties agree to allow a neutral third-party (arbitrator) to make a decision about the dispute after receiving evidence and hearing arguments. In non-binding arbitration the arbitrator’s decision is advisory and only final if the parties accept it. In binding arbitration the arbitrator’s decision is final, can be enforced by a court, and appealed only on very narrow grounds.

b. Arbitrator. An impartial third-party trained to facilitate dispute resolution between disputing parties, with the authority to make a decision when mutual agreement cannot be reached.

c. Association. The Mountain Oaks Homeowners’ Association (“MOHA”), as represented by its Board of Directors.

d. Claimant. The Association or any Owner initiating a claim, dispute, or complaint.

e. Dispute. Any claim, disagreement, complaint, between the Association and Owner(s).

f. Mediation. A process where a neutral third party (mediator) helps disputing parties to amicably discuss and resolve disputes by finding a mutually acceptable agreement. A mediation agreement may be reduced to a written contract which is enforceable in court.

g. Mediator. An impartial third-party trained to facilitate communication to achieve an agreement of resolution among parties involved in a conflict or dispute.

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h. Respondent. The Association or any Owner against whom a claim, dispute, or complaint is initiated.

**3. General Policy.** In the event of any dispute (except Exempt Disputes defined below) between the Association and an Owner, in situations that do not involve an imminent threat to the peace, health, or safety of the community, the Association and the Owner involved in the dispute shall work to resolve the dispute using the procedures set forth below, prior to filing a complaint in court or otherwise initiating a legal proceeding. For each of the resolution processes, Colorado law governs the process and the parties do not waive their right to employ legal counsel at their own expense to assist them.

**4. Exempt Disputes.** The Dispute Resolution Policy may be utilized at the Association's discretion, but is not mandated in the following instances:

a. Any action by the Association against an Owner to collect assessments and associated fees and fines, and liens and foreclosure proceedings.

b. Any claim of the Association which if not pursued by the filing of a lawsuit in a timely manner would be deemed barred due to the applicable statute of limitations.

c. Situations that involve an imminent threat to the peace, health, or safety of the community.

d. Disputes between Owners. The Association is available to assist Owners in negotiating an amicable solution to disputes between Owners, but the Association would not be a participant in any official mediation, arbitration, or litigation process.

**5. Mandatory Procedures for Resolving Disputes.** All claims, disputes, or complaints unless specifically exempt, shall be resolved using the following procedures in lieu of litigation.

a. Request for Resolution: The Claimant will provide the Respondent with a written notice of Request for Resolution, describing:

- i. The nature of the dispute, including the date and time, duration, location, persons involved, and the Respondent's role in the dispute.
- ii. The Claimants desired resolution from the Respondent.
- iii. Dates and times the Claimant is available to meet with the Respondent, in order to explore resolution of the dispute.

b. Negotiation. Within 30 calendar days of receipt of the Request for Resolution, the Association shall arrange for the Claimant and Respondent to meet, to make reasonable efforts to communicate directly with each other in an attempt to reach an agreement that serves the interests of all parties. The results of negotiation will be documented and made a matter of official Association records. If resolution is reached, a legally binding agreement will be prepared, signed by and issued to all parties and made a matter of official Association records.

c. Mediation. If the parties do not resolve the dispute through Negotiation within 30 calendar days (or other documented mutually agreed date) of the date of receipt of the Request for Resolution, the Claimant shall have 30 calendar days to submit a Request for Mediation to the Respondent. If the Claimant does not submit a request for mediation within the specified

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time, the dispute will be waived and the Respondent shall be released and discharged from any and all liability regarding the dispute.

- i. Selecting a Mediator: Unless otherwise agreed, the parties shall select a mutually acceptable mediator within 30 calendar days of the date of the receipt of the Request for Mediation. Each party will provide the other with the name of at least one acceptable mediator. If the parties cannot reach agreement on a mediator, or fail to submit a name for consideration, the Association will appoint one from an authorized mediation provider.
- ii. Roll of the Mediator: The parties will work with the mediator to establish the date for the mediation meeting. The parties shall meet with the mediator within 45 days of the date of the receipt of the Request for Mediation (or other documented mutually agreed date). The mediator will facilitate the process to gain a resolution agreement by the disputing parties. The mediator will not have authority to decide the complaint, but will use recognized techniques to assist the parties in making a decision.
- iii. Documentation of Mediation: The mediator shall provide the parties with documentation of the date and place mediation occurred and who attended. Should a resolution agreement be reached, the mediator will assist the parties in finalizing a written agreement which will be binding and enforceable. If resolution is not reached, the mediator shall issue a notice to the parties of termination of the mediation proceedings stating an agreement could not be reached, and the date mediation was terminated. All documents will be made a matter of official Association record.

d. Litigation: If Mediation fails to produce a resolution, the Claimant may elect to initiate legal proceedings, including filing a lawsuit in a court having jurisdiction over the claim. If legal action or proceeding is brought, the prevailing party is entitled to recover reasonable attorney fees and other costs incurred in that action or proceeding, in addition to any other relief to which they may be entitled, as permitted under the law.

d. Arbitration: If the parties do not resolve the dispute through Mediation, and agree to the use of Arbitration, the Association will document the Agreement to Arbitration and begin efforts to schedule a binding arbitration with a trained, neutral arbitrator who will decide the outcome of the dispute based on evidence and testimony provided by the parties. The parties agree to accept the decision of the arbitrator as final and binding on them to the fullest extent permitted under Colorado law. Judgment may be enforced in any court having jurisdiction.

- i. Selecting an Arbitrator: Unless otherwise agreed, the parties shall select a mutually acceptable arbitrator within 30 calendar days of the date of the receipt of the termination of mediation notice. Each party will provide the other with the name of at least one acceptable arbitrator. If the parties cannot reach agreement on an arbitrator, or fail to submit a name for consideration, MOHA will appoint one from an authorized arbitrator provider.
- ii. Role of the Arbitrator: The parties will work with the arbitrator to establish the date for the arbitration. The parties shall meet with the arbitrator within 60 days of the

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date of the receipt of the termination of mediation notice (or other mutually agreed date). The arbitrator will facilitate the process to gain a resolution agreement by the disputing parties. However, failing that, the arbitrator will consider all discussions and evidence presented during the process. The arbitrator's decision shall be binding on all parties.

- iii. Arbitration Award: The arbitrator shall provide the parties with a written award including findings of fact and conclusions, and identification of responsibility for payments. The award will be a binding arbitration decision enforceable under the law and precluding the right of either party to pursue legal proceedings or action in court.

**6. Failure to Comply with Agreement or Award.** If the parties resolve any dispute through negotiation, mediation, or arbitration, and a party fails to abide by the terms of the agreement or award, the other party may initiate legal proceedings to enforce the agreement or award without the need to again comply with the provisions of this Policy. Additionally, the party taking action to enforce the agreement or award shall, if that party prevails, be entitled to recover from the non-complying party all costs incurred in enforcing the agreement or award, including without limitation, attorney fees and costs, as permitted under Colorado law.

**7. Costs.** Each Party shall bear its own costs of the mediation, including attorney fees, and each Party shall share equally all charges rendered by the mediator, unless they agree otherwise. Any mutually agreed upon alternative will be acknowledged in the final documentation. In the event an Owner fails to pay his/her share of the costs, the amount shall be considered an assessment against such Owner collectible by the Association pursuant to the Declaration of Covenants and Colorado Law.

**8. Deviations.** The Association may deviate from these procedures only if, in its sole discretion, such deviation is reasonable, justified, and documented in writing as a matter of official record.

**9. Amendment.** This policy may be amended from time to time by the Board of Directors.

IN WITNESS WHEREOF, the undersigned certify that this Policy for Resolution of Disputes between the Association and Homeowners was adopted by resolution of the Board of Directors of Mountain View Homeowners Association on this 10th day of November, 2016.

MOUNTAIN OAKS HOMEOWNERS ASSOCIATION  
A Colorado nonprofit corporation,

By: Steve Carmichall  
President

| By: Beverly Collins  
Secretary