

# Flukey Estates Homeowners Association

## Policies and Procedures For Dispute Resolution between the Association and Owners

As required by C.R.S. 38-33.3-209.5

The following Procedures have been adopted by the **Flukey Estates Homeowners** Association ("the Association") pursuant to Colorado Revised Statute ("C.R.S.") 38-33.3-209.5, at a regular meeting of the Board of Directors ("the Board"). Additional policies, procedures and rules may exist separately.

### PURPOSE:

To provide a more efficient means of resolving disputes involving the Association and/or the Declaration of Covenants, Conditions, and Restrictions, or the Bylaws ("Governing Documents") and to reduce the costs and fees associated with dispute resolution.

WHEREAS, the Colorado Common Interest Ownership Act, in C.R.S. 38-33.3-124, encourages common interest communities to adopt protocols that make use of mediation in resolving disputes between the Association and one or more owners.

NOW, THEREFORE, IT IS RESOLVED that the Association does hereby adopt the following procedures governing the resolution of disputes.

Except as provided herein, the following procedures will be followed in all disputes or claims involving the Association and/or the Association's Governing Documents.

### **A. Dispute Resolution Procedures**

1. Prior to proceeding with any claim, the party asserting the claim ("Claimant") shall give written notice of such claim to all opposing parties ("Respondent"), which notice shall state plainly and concisely:
  - a. The nature of the claim, including all persons involved and Respondent's role in the claim;
  - b. The legal or contractual basis of the claim (i.e. the specific authority out of which the claim arises); and
  - c. The specific relief and/or proposed remedy sought.
2. After the Respondent receives the notice of claim, the parties shall make every reasonable effort to meet in person and confer for the purpose of resolving the claim by good faith negotiation. Such efforts may include inspections of the Claimant's or the Respondent's claim for purposes of evaluation of any alleged violation. Any party may be represented by attorneys or independent consultants to assist in the negotiations and to attend meetings.
3. If the parties do not resolve the claim through negotiations within sixty (60) days after submission of the claim to the Respondent, the Claimant shall have an additional sixty (60) days to submit the claim for mediation. In the event the parties are unable to obtain a mediator, a mediator shall be appointed upon application of either party to the District Court of Mesa County. In such event, the claim shall be deemed to be submitted upon filing the petition for appointment of the mediator.

4. If the Claimant fails to submit the claim to mediation within such time, or fails to appear at the mediation, the 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 such claim; provided, nothing herein shall release or discharge Respondent from any liability to any person other than Claimant.
5. Any settlement of the claim through mediation shall be documented in writing by the mediator and signed by the parties. If a termination of the mediation occurs, the mediator shall issue a written statement advising the parties are at an impasse.
6. Unless otherwise agreed, each party shall bear its own costs of the mediation, including attorney fees, and each party shall share equally all charges of the mediator.
7. Upon termination of mediation, if no resolution is reached, if Claimant desires to pursue the claim, Claimant shall thereafter be entitled to initiate final, binding arbitration of the claim with the American Arbitration Association or such other forum as may be agreed upon by the parties. Any award rendered may be entered in and enforced by any court having jurisdiction over the claim. Unless otherwise mutually agreed to by the parties for the claim, there shall be one arbitrator who, to the extent feasible, shall have expertise in the area(s) of dispute. In the event the parties are unable to agree upon an arbitrator within thirty (30) days after written notice, the presiding Judge of the District Court of Mesa County shall appoint an arbitrator qualified as set forth above upon application of a party.
8. The award of the arbitrator shall be accompanied by detailed written findings of fact and conclusions of law. In any arbitration, the arbitrator shall award the substantially prevailing party its reasonable costs and attorney fees. Except as may be required by law or for confirmation of an award, neither party nor the arbitrator may disclose the existence, content, or results of any arbitration without the prior written consent of all parties to the claim. Any award shall be enforceable in accordance with the C.R.S. 13-22-201 et seq., as amended from time to time.

## **B. Exclusions**

1. Unless all parties thereto otherwise agree, the following disputes or claims shall not be subject to the provisions of this policy:
  - a. An action by the Association relating to the collection or enforcement of the obligation to pay assessments or other charges set forth in the Association's Governing Documents or Rules; and
  - b. An action by the Association to obtain a temporary restraining order or preliminary injunction (or equivalent emergency equitable relief) and such other ancillary relief as the court may deem necessary in order to enjoin any immediate threat to persons or property, except that, once any temporary restraining order or preliminary injunctive relief is obtained, resolution of any permanent injunction claims shall be through arbitration as set for the herein; and
  - c. Any action between or among Owners, which does not include the Association as a party, if such action asserts a claim which would constitute a claim for relief independent of the Association's Governing Documents; and
  - d. Any action in which any indispensable party is not the Association, its officers, directors, or committee members, or a person subject to the Association's Governing Documents, or their officers, directors, partners, members, employees and agent; and
  - e. Any action to enforce a settlement agreement or arbitration award made under the provisions of this policy.

- C. **Judicial Enforcement.** If the parties agree to a resolution of any claim through negotiation or mediation in accordance with this policy, and any partner thereafter fails to abide by the terms of such agreement, than any other party may file its action in court to enforce such agreement without the need to again comply with the

procedures set forth in this policy. In such event, the party taking action to enforce the agreement shall be entitled to recover from the non-complying party (or if more than one non-complying party, from all such parties as the court may determine) all costs incurred in enforcing such agreement, including without limitation, reasonable attorney fees and court costs.

- D. **Statute of Limitations.** No claim may be initiated after the date when institution of legal or equitable proceedings based on such claim would be barred by the applicable statute of limitation or statute of repose.

CONFLICTS BETWEEN DOCUMENTS:

In case of discrepancies between this Policy and Procedure and the Declaration of Covenants, Conditions, and Restrictions (the Declaration), or the Bylaws or the Association, the Declaration shall control.

The undersigned, being the President of the Association, certifies that the foregoing resolution was adopted by the Board of Directors of the Association at a duly called and held meeting of the Board of Directors on the \_\_\_\_\_ day of \_\_\_\_\_, 2023.

Flukey Estates Homeowners Association

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President