



DE WIJNLANDEN

DE WIJNLANDEN HOME OWNERS ASSOCIATION ESTATE DISPUTE RESOLUTION PROCEDURE - SEPTEMBER 2017

(Approved on 25 May 2017)

Dispute Resolution

Background

Where there are people with different views and beliefs living together in a community, there will always be disputes, between home owners, between the directors, other business entities, suppliers and visitors. Homeowners associations must have an agreed policy and process in place to resolve disputes and conflict as they arise. This has become even more relevant now, that the Community Schemes Ombudsman Service Act (CSOSA) is in place, where the role of the service is to provide an alternate dispute resolution process for all stakeholders of a community scheme. The service will, when receiving an application from a member, check whether the member has attempted to resolve the dispute internally. Therefore, each residential community scheme (HOA) needs to develop and implement their own dispute resolution process.

The Policy

Several methods of dispute resolution (DR) may be offered, such as mediation, or binding or non-binding arbitration. Communities are encouraged to establish DR committees that are independent from the board and utilise only neutral parties for conducting mediation or arbitration. Always mindful of due process considerations, the policies should provide for a reasonable period within which to resolve disputes and for DR sessions to be held in mutually convenient locations for all parties. If the method of DR selected requires payment of a fee, the resolution should address how the costs will be allocated between the parties and in all cases, the costs should not be prohibitive for owners to meaningfully participate in the procedure

Resolutions should clearly distinguish any matters that typically would not be considered for DR. The need for management or directors to involve themselves with neighbour disputes is only if this impacts on the community at large

The objective is to avoid external forced intervention and legislation to deal with disputes in an HOA that is demonstrating fair processes relating to conflict and disputes.

Principles

1. It is important that the HOA has the following in place
 - A MOI/constitution that has been aligned to the relevant legislation (EG Companies ACT, Sectional titles management ACT, CSOSA)
 - An agreed and properly constituted set of rules and regulations including management rules, conduct rules, security and safety rules, environmental rules, building guidelines, architectural rules, etc.
2. It is also important that the HOA applies its rules fairly and consistently where the rules have been adopted at a properly constituted general meeting and lodged with the CSOS
3. Rules must be communicated regularly, they must be transparent with a clearly stated purpose that demonstrates the reason being in the best interests in serving the community at large and the penalties for the breach of a rule must be fair and designed to change behaviour
4. A portfolio committee of the Trustee Committee will be nominated on a per-case basis that will include at least one(1) Trustee and other members of the HOA
5. A dispute must be raised within 14 days of Trustee feedback notification.

Procedure for implementing rules and regulations

1. The breach is recorded, stating the nature of the breach, the time and place that the breach occurred, the name and details of the member responsible for the breach and the names and details of other parties involved in the breach
2. A full account detailing all the evidence that the rule was breached and any statements from any parties, photographs and evidence etc. are in place
3. The appropriate penalty is attached to the breach and the member's file is scrutinized for a history of past breaches
4. A decision is taken to enforce the rule and implement the penalty being consistent , reasonable and fair
5. The member is notified of the breach and the reason for the rule and potential impact of the breach.

Procedure for dealing with disputes

1. Disputes are raised by any member by submitting a request to the Estate Manager, detailing the following
 - The nature of the dispute
 - A motivation for the dispute to be considered
 - The request for the action the applicant deems appropriate
2. The Estate Manager considers the request and decides
3. Should the decision stand the applicant may request a meeting with the Estate Manager
4. The Estate Manager considers all evidence at the meeting and makes a decision

5. Should the decision stand the applicant may request a meeting with the Trustee Committee
6. The Trustee Committee considers the request for a hearing with the Committee and a decision is taken
7. Should a session with the committee take place, the Trustee Committee's Chairperson drafts the minutes of the meeting and the committee takes the decision and advises the member within seven (7) days.