

Shadow Run Townhomes Homeowners Association, Inc.’s Claim Resolution Policy

1.01 Policy: The Association is responsible for the maintenance and repair of significant portions of the community. The purpose of this policy is to set forth the procedures that Members must follow to make a claim against the Association for damages allegedly arising out of or relating to the Association’s maintenance and repair obligations (“Claim”), as set forth in Article V of the Amended and Restated Declaration of Covenants, Conditions and Restrictions of Shadow Run Townhomes (the “Declaration”).

1.02 Procedure:

- (a) Notice of Claim. Within fourteen (14) days after a Member (the “Claimant”) discovers the first indications of a Claim, the Claimant must initiate its Claim with the Association by filling out the Claim Form attached hereto and submitting it to the Association’s Board of Directors (the “Board”). In no event may a Claim be initiated after the date when institution of legal or equitable proceedings based on such Claim would be barred by an applicable statute of limitations or repose. The Claimant shall update the Claim Form as additional information becomes available. If the Claimant does not timely initiate its Claim under this paragraph, the Claimant shall be deemed to have waived the Claim, and the Association shall be released and discharged from any and all liability on the Claim.

- (b) Claim Form Review. Within a reasonable time (not to exceed twenty-one (21) days) after receipt of the Claim Form, the Board shall review the Claim Form and make an initial determination as to whether, assuming the alleged facts are true, the Claimant has set forth a potential Claim.
 - (1) If the Board determines that the Claimant has not set forth a potential Claim, the Board shall notify the Claimant in writing that the Claim will be denied unless an amended Claim Form is received within fourteen (14) days that sets forth a potential Claim; otherwise, the Claim shall be deemed denied, with the Claimant having waived the Claim and the Association being released and discharged from any and all liability on the Claim.

- (2) If the Board determines that the Claimant has set forth a potential Claim (either through the submission of the initial or amended Claim Form), the Board shall notify the Claimant in writing that further investigation of the Claim is necessary to determine the validity of the Claim.
- (c) Investigation. After the Board's initial determination that a potential Claim exists, the Board and its agents shall investigate such Claim. The Claimant agrees to cooperate with the Board's investigation of the potential Claim, by, among other things, permitting full access to the Claimant's Lot and providing the Board all records relating to the Claim (e.g., bids, invoices, receipts, and reports). The Board shall conduct its investigation in a timely manner in accordance with the nature of the Claim.
- (d) Decision. If, after investigation of the Claim, the Board determines that the Association is not responsible for any portion of the Claim, the Board shall notify the Claimant in writing and deny the Claim. If the Board determines that the Association may be responsible for the Claim, then the parties shall attempt in good faith to negotiate a resolution of the Claim for thirty (30) days, or for such longer period as the parties may agree. The Board's decision to negotiate a resolution of the Claim shall not be construed as a waiver of any rights or as an admission of liability on behalf of the Association, which expressly reserves all its rights, claims and defenses pertaining to the Claim.
- (e) Mediation. If the parties do not resolve the Claim through negotiation, the Claimant shall submit the claim to mediation within thirty (30) days from the end of the negotiation period. Mediation shall be completed using a trained, independent mediator familiar with the governance of common interest communities acceptable to both parties. In the event that the parties cannot agree on a mediator, each party will select a qualified mediator. The mediators so selected will select a third mediator by mutual agreement, which mediator will conduct the mediation. If the Claimant does not submit its Claim to mediation within the time provided, does not appear for the mediation, or fails to select a mediator as provided above, the Claimant shall be deemed to have waived the Claim, and the Association shall be released and discharged from any and all liability on the Claim.
- (f) Costs. The costs of mediation shall be split equally between the parties, with each party bearing the cost of its own attorney fees, if any.

In the event that a Claimant fails to pay its share of the mediation costs, the unpaid amount shall be considered an assessment against that Claimant's Lot, and may be collected as provided by the Declaration, the policies, procedures, rules and regulations of the Association, and applicable Colorado law.

- (g) Mediation Agreement. Any settlement or resolution of the Claim through mediation shall be documented in writing by the mediator and signed by the parties (the "Mediation Agreement"). If any party fails to abide by the terms of the Mediation Agreement, then any party affected by the breach may file suit or initiate other proceedings to enforce the Mediation Agreement without the need to again comply with this policy. Any suit to enforce the terms of the Mediation Agreement must be brought in the state courts of the State of Colorado, with venue in Mesa County, Colorado. The Mediation Agreement may be presented to the court as a stipulation of the parties either before or after the breach of its terms. In the event of a suit to enforce the Mediation Agreement, the party taking action to enforce the Mediation Agreement shall be entitled to recover from the non-complying party all costs incurred in enforcing the Mediation Agreement, including, but not limited to, attorney fees and court costs.
- (h) Mediation Certificate. If the parties do not settle the Claim within thirty (30) days of submission of the Claim to mediation, or within such other time as determined by the mediator or agreed to by the parties, the mediator will issue a certificate, signed by the mediator (the "Mediation Certificate"). The Mediation Certificate will state that the parties have attempted to mediate a resolution of the Claim, the parties are at an impasse, the date on which mediation was terminated, and any other matter the mediator deems appropriate.

1.03 Litigation. Unless otherwise waived because of a failure to adhere to the procedures and timelines set forth in this Claim Resolution Policy, either party may commence a judicial or administrative proceeding regarding the Claim after issuance of the Mediation Certificate.