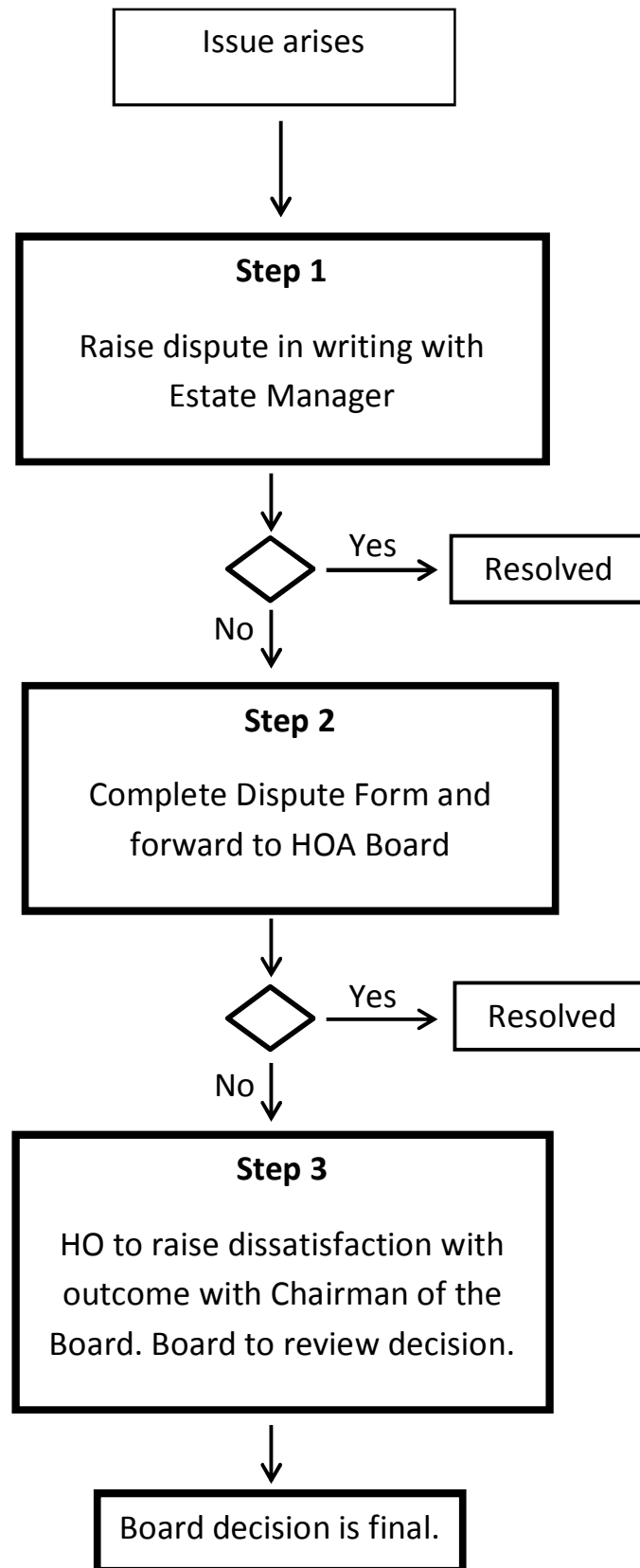


# DISPUTE RESOLUTION PROCEDURE





## HOMEOWNER DISPUTE RESOLUTION POLICY

### 1. OBJECTIVE

It is considered good governance that disputes are resolved in the interests of on-going relationships and in the most cost-effective manner.

The primary objective of the *Dispute Resolution Procedure* is to allow a home owner or a group of home owners to formally bring to the HOA's attention any dissatisfaction or feeling of injustice which he/she/they may have about a situation or decision made relating to the Estate.

The HOA believes that given goodwill by all parties in addressing their grievances and bearing in mind the code of conduct as practiced within the Estate, the under mentioned guidelines should satisfy any person's submission.

The goals of the *Dispute Resolution Procedure* is therefor;

- a) to improve compliance with the rules of the Estate,
- b) to enhance community involvement in the dispute resolution process,
- c) to provide more effective dispute resolution,
- d) to ensure fairness and transparency, and to facilitate access to justice,  
and
- e) to prevent undue cost and delay.

## **2. STATUS OF DISPUTE RESOLUTION POLICY**

The parties involved in any dispute participate in the dispute resolution process in good faith. The *Dispute Resolution Procedure* is available to all home owners. The Board as well as the Control Architect may also make use of the procedure as provided for in this policy.

This *Dispute Resolution Procedure* is subject to the provisions of;

- (i) the Memorandum of Incorporation (MOI),
- (ii) the Conduct Rules,
- (iii) the Homeowner and Resident Charter, and
- (iv) relevant legislation.

## **3. MATTER TO BE TABLED FOR RESOLUTION**

In order to facilitate the resolution of disputes, Members may call on this procedure for resolution of the following:

- (i) A provision of the MOI,
- (ii) Homeowner and Resident Charter,
- (iii) Rulings by the Control Architect and Secondary Control Architect, and
- (iv) Appeal against infringement penalties.

Disputes where this procedure does NOT apply are;

- (a) A member disputing the fact that he/she has committed a breach of any of the Conduct Rules,
- (b) disputes between individual home owners, which do not fall with (i) to (iv) above,
- (c) a dispute between a home owner and the Developer.

- (d) a dispute between a home owner and his/her Contractor, and
- (e) a dispute between a homeowner and the Local Council.

In the event of any member disputing the fact that he/she has committed a breach of any of the Conduct Rules, a Committee of three directors will be formed for the purpose to adjudicate upon the issue at such time and in such manner and according to such procedure as the Chairman may direct. The Directors may, notwithstanding this, enforce the provisions of any Conduct Rules by proceedings in a court of competent jurisdiction and for such purpose may appoint such attorneys and counsel as the Board may deem fit.

For purposes of clarity – paragraph 21.5 of the Conduct Rules state that, “in the event of any dispute [referring to, among others the architectural and aesthetical guidelines during the design and construction phases] the decision of the Control Architect will be final and binding on the parties, provided that an owner who feels aggrieved by a decision of the Control Architect may approach any other Control Architect if so appointed by the Board for further consideration. Any costs in this regard will be borne by such owner”. Only after consultation with the “other Control Architect” is this *Dispute Resolution Procedure* applicable.

#### **4. PROCEDURE**

Each home owner must, before declaring any matter as a dispute, ensure that he/she has read the most current Conduct Rules and has engaged with the Estate Manager or other home owners to obtain clarity as to the matter at hand. The Estate Manager will provide the home owner with information about what the Estate Rules require and how to resolve a dispute without having to incur legal costs.

## **Step 1:**

The home owner must raise the dispute in writing with the Estate Manager (without prejudice to the home owner). Disputes must be addressed to the Estate Manager, Boschhoek Mountain Estate and delivered to [jandre@boschhoekmountain.co.za](mailto:jandre@boschhoekmountain.co.za)

The Estate Manager must to the best of his ability:

- Meet with the aggrieved party(s) at a convenient time and location;
- Obtain all relevant facts about the issue (distinguishing the fact from opinion and/or hearsay);
- Objectively and with an open mind analyse the underlining issue(s). If assessed to be of a minor nature, the Estate Manager should respond autonomously. If assessed to be of a serious nature, or has the potential to escalate, the process should include obtaining input from the relevant Board Member(s), and / or the relevant Operational Sub-Committee in the preparation of a written response;
- Endeavour to resolve the issue as speedily as possible, resolving and responding (in writing) to the issue within 21 (twenty one) working days of receiving the dispute in writing.

If the Estate Manager's decision is unacceptable to the home owner, Step 2 becomes effective and the Estate Manager must advise the home owner of the subsequent stages of the procedure and of the home owner's right to seek assistance of a home owner representative.

## **Step 2:**

If the home owner elects to proceed, it is now deemed as a dispute and his/her grievance must record the relevant details on the Dispute Form.

The signed form, addressed to the Board, must be handed to the Estate Manager who must record his findings on the Dispute Form and forward the form and all facts pertaining thereto to the Board, who shall acknowledge receipt to the home owner within 2 (two) working days. The Board shall hold an enquiry into the matter within 30 (thirty) working days of receipt.

The enquiry shall be attended by the relevant HOA Sub Committee and Estate Manager. A record of the enquiry will be kept on record by the Estate Manager.

The HOA Board will respond in writing as to its ruling.

If the home owner is still not satisfied with the outcome, he/she must within 2 (two) working days of the receipt of the decision, implement step 3.

### **STEP 3:**

The home owner must advise the HOA Chairman in writing of his/her dissatisfaction with the outcome of the Dispute Resolution investigation.

The matter will be discussed at the next HOA Board meeting. If the home owner is not satisfied with the outcome of the decision of the HOA Board, the home owner may request that the HOA Board reconsider its decision.

On declaration of a dispute, the HOA may suggest a meeting with the effected party explaining the reason for the decision. The decision cannot be changed at this meeting and can be at best referred back to the HOA.

The HOA Board's decision will be final. The home owner may, if still dissatisfied with the decision, take the matter further in terms of the normal legal process. Once litigation is started, no HOA member may comment on the relevant issue and legal representatives will pursue the matter further.