NEW STATUTORY PROCEDURE FOR SUITS ENFORCING DEED COVENANTS OR RESTRICTIONS[1]

There is now an expedited statutory procedure for disputes involving deed covenants or restrictions in subdivisions.[2]

WHAT IS THE EXPEDITED STATUTORY PROCEDURE?

After an eligible complaint to enforce a deed covenant or restriction in a subdivision is filed in the Court of Chancery, the following process occurs:

1. The matter will be referred to a mediator whose role is to assist the parties in trying to resolve the dispute;

2. A mandatory mediation hearing will be held within 60 days of the filing of the complaint;

3. If the parties are unable to resolve the dispute through mediation, a trial will be held before a Master in Chancery within 120 days of the unsuccessful mediation hearing.[3]

WHO IS ELIGIBLE TO USE THE EXPEDITED STATUTORY PROCEDURE?

Not every case involving a deed covenant or restriction is eligible for the expedited statutory procedure. Only cases brought by homeowners associations or individual homeowners and/or lot owners in subdivisions are eligible for expedition under the following circumstances:

1. A duly qualified officer of a homeowners association or other entity representing the homeowners or lot owners of a subdivision may file suit in the Court of Chancery against a homeowner or lot owner in the same subdivision to enforce a deed covenant or restriction;

OR

2. If no homeowners association or similar entity exists, then any homeowner or lot owner in the subdivision may file suit in the Court of Chancery against a homeowner or lot owner in the same subdivision to enforce a deed covenant or restriction.

IS IT NECESSARY TO HAVE LEGAL COUNSEL?

Neither party is required to be represented by counsel during the mediation process. However, if mediation is unsuccessful, then:

1. A homeowners association or other entity must be represented by counsel in order to proceed to trial;

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[1] 10 *Del. C.* § 348 also provides an expedited procedure for suits to avoid improper enforcement of deed covenants or restrictions.
[2] See attached statutory provision.
[3] Trial may be scheduled for a later time upon good cause shown.

2. An individual homeowner or lot owner may represent himself at trial, but will find the assistance of counsel to be extremely useful.

WHAT HAPPENS AFTER TRIAL?

If mediation is unsuccessful and the dispute goes to trial,

1. The losing party is responsible for paying the winning party's attorney fees and court costs.[4]

HOW DO I BEGIN THE PROCESS?

1. Prepare a complaint describing the dispute and requesting appropriate relief;

2. Complete the attached certification form certifying that the case is eligible for the expedited statutory procedure;[5]

3. Present the verified complaint and certification to a clerk in the Register in Chancery in the county in which the subdivision is located; and

4. Pay the required filing fee of $250.00 to the Register in Chancery.

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[4] The payment of attorney fees and court costs may not result if the court finds the outcome of enforcing this provision to be unfair, unreasonable or harsh.

[5] Failure to complete and attach the certification form to the complaint will result in the case being placed on the normal litigation track.

IN THE COURT OF CHANCERY OF THE STATE OF DELAWARE

IN AND FOR _____ COUNTY

_____	:	
_____,	:	
Plaintiff,	:	C.A. No.
v.	:	
_____	:	
_____,	:	
Defendant(s).	:	

CERTIFICATION OF ELIGIBILITY OF HOMEOWNERS ASSOCIATION SEEKING TO ENFORCE DEED COVENANT

AND NOW comes Plaintiff _____, by and through its President/Vice President/Secretary/Treasurer (circle one), _____, who certifies that:

1. Plaintiff is a homeowners association or other similar legal entity comprised of all property owners of _____ subdivision.

2. Plaintiff is seeking to enforce a deed covenant or restriction against Defendant(s) _____, property owners(s) in _____ subdivision.

3. Plaintiff is eligible for expedition under 10 *Del. C.* § 348.

_____
Petitioner

Dated:

_____
Notary (Seal)

IN THE COURT OF CHANCERY OF THE STATE OF DELAWARE

IN AND FOR _____ COUNTY

_____	:	
_____,	:	
Plaintiff,	:	C.A. No.
v.	:	
_____	:	
_____,	:	
Defendant(s).	:	

CERTIFICATION OF ELIGIBILITY OF PROPERTY OWNER SEEKING TO ENFORCE DEED COVENANT

AND NOW comes Plaintiff(s) _____, who certifies/certify that:

1. Plaintiff(s), property owner(s) in _____ subdivision, is/are seeking to enforce a deed covenant or restriction against Defendant(s) _____, property owner(s) in the same subdivision.

2. There exists no homeowners association or other similar legal entity comprised of all the property owners of _____ subdivision.

3. Plaintiff(s) is/are eligible for expedition under 10 *Del. C.* § 348.

_____
Petitioner

Dated:

_____
Notary (Seal)

IN THE COURT OF CHANCERY OF THE STATE OF DELAWARE

IN AND FOR _____ COUNTY

_____	:	
_____,	:	
Plaintiff,	:	C.A. No.
v.	:	
_____	:	
_____,	:	
Defendant(s).	:	

CERTIFICATION OF ELIGIBILITY OF PROPERTY OWNER
SEEKING TO AVOID IMPROPER ENFORCEMENT OF DEED COVENANT

AND NOW comes Plaintiff(s) _____, who certifies/certify that:

1. Plaintiff(s), property owner(s) in _____ subdivision, is/are seeking to avoid improper enforcement of a deed covenant or restriction against Defendant(s) _____, a homeowners association in the same subdivision.

2. Plaintiff(s) is/are eligible for expedition under 10 *Del. C.* § 348.

_____
Petitioner

Dated:

_____
Notary (Seal)