
OLR Bill Analysis

sHB 5590

AN ACT ESTABLISHING A PILOT PROGRAM FOR THE MEDIATION OF CONDOMINIUM-RELATED DISPUTES.

SUMMARY:

This bill requires the chief court administrator, within available appropriations, to establish a pilot mediation program for disputes between two unit owners, or a unit owner and the executive board, of a condominium or other common interest community. The administrator must establish the pilot program in the Hartford, New Haven, and Stamford-Norwalk judicial districts.

The bill establishes a process for a party to request mediation. Participation is voluntary for both parties. The requesting party must pay a \$50 initiation fee, and an additional \$200 fee if the other party agrees to mediate and pays a \$250 filing fee.

If mediation is successful, the bill requires the parties and the special master conducting the mediation to prepare and sign a written agreement.

Among other things, it also requires the chief court administrator to establish qualifications for attorneys experienced in community association law to serve as special masters for the mediations. His office must then (1) develop a process for attorneys to apply to serve as special masters and (2) create a list of such attorneys and make it available to participating courts.

The bill requires the civil session presiding judge of any participating courts to maintain annual statistical data on the pilot program. The data must include (1) the number of requests to participate, (2) the number of requests resulting in mediation, and (3) whether mediation resolved the dispute. The bill requires the chief court administrator, by January 15, 2017, to report this data to the

Judiciary Committee.

EFFECTIVE DATE: October 1, 2014, except for the provisions on establishing the special master qualifications and list, which are effective upon passage.

PILOT MEDIATION PROGRAM

Applicability

Under the bill, the program is available to unit owners or boards of associations governed by the Common Interest Ownership Act (CIOA) (regardless of when the community was created) or the Condominium Act (see BACKGROUND). The program is for mediation of disputes concerning the application and interpretation of (1) the association's bylaws, rules, or regulations; (2) the common interest community's declaration; or (3) CIOA or the Condominium Act. Foreclosure disputes are not eligible.

Process to Request Mediation

The bill requires a unit owner, or executive board member acting on behalf of the association, seeking mediation to file a written request at a participating court as designated by the chief court administrator and on a form he prescribes. The form must at least (1) list the names and addresses of the parties to the dispute and (2) describe the nature of the dispute. Along with the form, the requestor must include a nonrefundable \$50 initiation fee.

When the court receives such a request, it must notify the other party identified in the request, by regular mail. That party's participation is optional. The notification must include any forms the party will need to complete and return to the court if he or she chooses to participate in mediation.

If the party chooses to participate, he or she must return to the court any required forms and a \$250 filing fee, within 60 days of the court's written notification. The court must then, using regular mail, notify the party that initiated the mediation request that (1) the other party accepted and (2) the court will schedule the mediation after the

initiating party pays a \$200 nonrefundable filing fee.

If the initiating party fails to pay this fee, the other party is refunded the \$250 fee he or she sent when accepting the request to participate. Otherwise, that fee is nonrefundable.

Mediation

The bill requires the court to schedule a date, time, and place for mediation within 90 days of receiving all required filing forms and fees. The court must notify the parties about the mediation session, by regular mail.

To conduct the mediation session, the court's civil session presiding judge must choose a special master with demonstrated knowledge in community association law from the list compiled by the office of the chief court administrator, as described below. The special master is not paid for serving in this role.

The bill requires the special master to attempt to mediate a voluntary resolution of the parties' dispute. It allows either party to withdraw from mediation at any time, after notifying the other party and the special master. It also allows the special master to end the mediation if he or she finds that further efforts to mediate would be futile.

If the parties resolve the dispute through mediation, the special master must help them prepare a written agreement that specifies the terms of the resolution. Both parties and the special master must sign the agreement.

The bill generally prohibits either party or the special master from (1) voluntarily disclosing any oral or written communication received or obtained during the mediation or (2) being required to disclose such communications through discovery or compulsory process. But these prohibitions do not apply if:

1. each of the other participants agree in writing to the disclosure;

2. the disclosure is needed to enforce a written agreement resulting from the mediation;
3. the disclosure is required by statute, regulation, or a court, and the person first notifies the other participants; or
4. the disclosure is required because a court finds that the interest of justice outweighs the need for confidentiality, consistent with the principles of law.

The bill specifies that remedies provided under it are not exclusive and are in addition to any other remedies available under Connecticut statutes or common law. By law, unit owners or associations can file lawsuits to enforce CIOA or the Condominium Act, as applicable, or the association's governing instruments (CGS §§ 47-74, 47-278).

Special Masters' Qualifications and List

The bill requires the chief court administrator, by September 30, 2014, to prescribe the qualifications for attorneys to serve as special masters for the pilot program. At a minimum, those qualifications must require that the attorney (1) be admitted to the Connecticut bar and (2) have engaged in the practice of law for at least 10 years, including at least seven years in community association law.

After the chief court administrator establishes these qualifications, his office must develop an application process for attorneys seeking to serve as special masters. The office must maintain a list of qualified attorneys and make it available to the civil session presiding judges in the courts designated to participate in the program.

BACKGROUND

Common Interest Ownership Act (CIOA) and Condominium Act

CIOA governs the creation, alteration, management, termination, and sale of condominiums and other common interest communities formed in Connecticut on and after January 1, 1984 (CGS § 47-200 et seq.). Certain CIOA provisions also apply to common interest communities created in Connecticut before January 1, 1984, but do not invalidate existing provisions of the communities' governing

instruments. Common interest communities created before then can amend their governing instruments to conform to portions of CIOA that do not automatically apply (CGS §§ 47-214, -216, -218).

The Condominium Act (CGS §§ 47-68a to 47-90c) governs condominiums created from 1977 through 1983, except when CIOA applies.

COMMITTEE ACTION

Judiciary Committee

Joint Favorable Substitute

Yea 35 Nay 3 (03/28/2014)