



# House of Representatives

General Assembly

**File No. 689**

*January Session, 2015*

House Bill No. 7031

*House of Representatives, April 16, 2015*

The Committee on Judiciary reported through REP. TONG of the 147th Dist., Chairperson of the Committee on the part of the House, that the bill ought to pass.

***AN ACT CONCERNING THE ESTABLISHMENT OF A PILOT PROGRAM FOR THE MEDIATION OF CONDOMINIUM-RELATED DISPUTES.***

Be it enacted by the Senate and House of Representatives in General Assembly convened:

1 Section 1. (NEW) (*Effective October 1, 2015*) (a) As used in this  
2 section:

3 (1) "Administrative region" means two or more probate districts in a  
4 geographic area designated by the Probate Court Administrator;

5 (2) "Association" means an association of unit owners, as defined in  
6 section 47-68a of the general statutes, or an association, as defined in  
7 section 47-202 of the general statutes;

8 (3) "Unit" means a unit, as defined in section 47-68a or 47-202 of the  
9 general statutes; and

10 (4) "Unit owner" means a unit owner, as defined in section 47-68a or  
11 47-202 of the general statutes.

12 (b) The Probate Court Administrator shall, within available  
13 appropriations, establish a pilot program for the mediation of a  
14 dispute arising between one or more unit owners and an association.  
15 The pilot program shall be administered in two administrative regions  
16 as determined by the Probate Court Administrator. The Probate Court  
17 Administrator shall consult with the probate judges to determine the  
18 administrative regions that shall participate in the pilot program. The  
19 pilot program shall mediate disputes between unit owners and an  
20 association relating to the application or interpretation of an  
21 association's bylaws, rules and regulations and the provisions of  
22 chapters 825 and 828 of the general statutes. Disputes that are related  
23 to a foreclosure action initiated against a unit owner or exclusively  
24 between unit owners with no association involvement shall not be  
25 eligible for the pilot program.

26 (c) Any unit owner or association with a dispute that meets the  
27 criteria set forth in subsection (b) of this section may file a request for  
28 mediation under the pilot program. Such request shall: (1) Be in  
29 writing, on such form as the Probate Court Administrator may  
30 prescribe, (2) specifically set forth the nature of the dispute, (3) contain  
31 an attestation by both the unit owner and a representative of the  
32 association that his or her participation in the pilot program is  
33 voluntary, (4) be accompanied by a filing fee of two hundred fifty  
34 dollars, and (5) be filed in the probate district in which the unit is  
35 located.

36 (d) Upon receipt of a request for mediation, the court shall promptly  
37 notify the Probate Court Administrator of such request. Upon receipt  
38 of such notification, the Probate Court Administrator shall assign the  
39 matter to a special assignment probate judge, appointed pursuant to  
40 section 45a-79b of the general statutes, as amended by this act, who  
41 possesses demonstrated expertise in mediation of disputes.

42 (e) The court shall set a time and place for a mediation session and  
43 shall give notice by regular mail of the session to each unit owner and  
44 the association identified in the request for mediation and to such

45 other persons as the court determines. The special assignment probate  
46 judge shall attempt to mediate a voluntary resolution of the dispute  
47 between the unit owner and a representative of the association. A unit  
48 owner or representative of the association may withdraw from  
49 mediation at any time during the process after providing notice to all  
50 persons participating in the mediation and the special assignment  
51 probate judge. In addition, the special assignment probate judge may  
52 terminate the mediation upon finding that further efforts to mediate  
53 the dispute would be futile. If a resolution of the dispute is achieved,  
54 the special assignment probate judge shall assist in the preparation of a  
55 written agreement, setting forth the specific terms of the agreement.  
56 The written agreement shall be signed by the unit owner, a  
57 representative of the association and the special assignment probate  
58 judge. Compliance with the terms of the written agreement by the unit  
59 owner and the association shall be deemed an obligation imposed by  
60 the provisions of chapter 825 or 828 of the general statutes, as the case  
61 may be, and the unit owner or the association may bring an action in  
62 the Superior Court to enforce the terms of the agreement.

63 (f) A participant in a mediation shall not voluntarily disclose or,  
64 through discovery or compulsory process, be required to disclose any  
65 oral or written communication received or obtained during the course  
66 of a mediation, unless (1) each of the other participants agrees in  
67 writing to such disclosure, (2) the disclosure is necessary to enforce a  
68 written agreement that resulted from the mediation, (3) the disclosure  
69 is required by statute or regulation, or by any court, after notice to all  
70 participants to the mediation, or (4) the disclosure is required as a  
71 result of circumstances in which a court finds that the interest of justice  
72 outweighs the need for confidentiality, consistent with the principles  
73 of law.

74 (g) The remedies provided under this section are not exclusive and  
75 are in addition to any other remedies in any section of the general  
76 statutes or which are available under common law.

77 (h) The mediation pilot program established pursuant to this section

78 shall terminate on September 30, 2018.

79 Sec. 2. Section 45a-79b of the general statutes is repealed and the  
80 following is substituted in lieu thereof (*Effective October 1, 2015*):

81 (a) There shall be special assignment probate judges appointed by  
82 the Chief Justice of the Supreme Court, on nomination by the Probate  
83 Court Administrator, from among the [judges of] probate judges  
84 elected as provided in section 45a-18. A nominee of the Probate Court  
85 Administrator shall have demonstrated the special skill, experience or  
86 expertise necessary to serve as a special assignment probate judge. The  
87 Probate Court Administrator shall issue regulations pursuant to  
88 subsection (b) of section 45a-77 to establish requirements concerning  
89 the responsibilities of special assignment probate judges and the  
90 number, geographic distribution and expertise of such judges. A  
91 special assignment probate judge shall serve at the pleasure of the  
92 Chief Justice.

93 (b) Subject to the approval of the Chief Court Administrator, the  
94 Probate Court Administrator shall fix the compensation of special  
95 assignment probate judges appointed pursuant to this section. Such  
96 compensation shall, on the order of the Probate Court Administrator,  
97 be paid from the Probate Court Administration Fund established  
98 under section 45a-82. [Such] Notwithstanding the provisions of section  
99 45a-95a, such compensation, including compensation that a special  
100 assignment probate judge receives as a judge of probate of the district  
101 to which the judge was elected, shall not exceed the [compensation  
102 provided for a judge of probate under subdivision (4) of subsection (a)  
103 of section 45a-95a] maximum total compensation received by a  
104 workers' compensation commissioner under section 31-277. A special  
105 assignment probate judge shall have such benefits as may inure to him  
106 or her as a judge of probate and shall receive no additional benefits,  
107 except compensation provided under this subsection and retirement  
108 benefits calculated in accordance with sections 45a-34 to 45a-54,  
109 inclusive.

This act shall take effect as follows and shall amend the following sections:		
Section 1	<i>October 1, 2015</i>	New section
Sec. 2	<i>October 1, 2015</i>	45a-79b

**JUD**      *Joint Favorable*

The following Fiscal Impact Statement and Bill Analysis are prepared for the benefit of the members of the General Assembly, solely for purposes of information, summarization and explanation and do not represent the intent of the General Assembly or either chamber thereof for any purpose. In general, fiscal impacts are based upon a variety of informational sources, including the analyst's professional knowledge. Whenever applicable, agency data is consulted as part of the analysis, however final products do not necessarily reflect an assessment from any specific department.

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**OFA Fiscal Note**

**State Impact:**

<b>Agency Affected</b>	<b>Fund-Effect</b>	<b>FY 16 \$</b>	<b>FY 17 \$</b>
Probate Court	SF - Potential Cost	2,250 per district	3,000 per district
Banking Dept.; Probate Court	PCAF - Potential Revenue Gain	4,500 per district	6,000 per district

Note: PCAF=Probate Court Administration Fund; SF=Special Fund (Non-appropriated)

**Municipal Impact:** None

**Explanation**

The bill specifies that the Probate Court Administrator create a condominium mediation program in two or more probate districts within available appropriations. The requesting party must pay a filing fee of \$250. It is anticipated that the probate court would schedule mediations to occur at maximum one day a month. The designation of a probate judge as a special assignment probate judge results in a salary increase of \$50/hour or \$250/day for the time spent on assignment for a total maximum cost of \$3,000 for each district per year.

It is anticipated that this bill will result in a revenue gain (if two or more mediations are scheduled each of the days as expected) of at least \$6,000 per district each year.

The bill is effective October 1, 2015, therefore the FY 16 cost and revenue gain reflects 9 months of operation.

**The Out Years**

The annualized ongoing fiscal impact identified above would

continue into the future subject to inflation.

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**OLR Bill Analysis****HB 7031*****AN ACT CONCERNING THE ESTABLISHMENT OF A PILOT PROGRAM FOR THE MEDIATION OF CONDOMINIUM-RELATED DISPUTES.*****SUMMARY:**

This bill requires the probate court administrator, within available appropriations, to establish a three-year pilot mediation program for disputes between one or more unit owners and an association of a condominium or other common interest community. He must select two administrative regions (i.e., groups of two or more probate districts) in which the program will operate and consult with the probate judges when doing so.

The bill establishes procedures for the mediation. Participation is voluntary for both parties, and either party may withdraw at any time. The requesting party must pay a \$250 filing fee.

Under the bill, special assignment probate judges will conduct the mediation (see BACKGROUND). If mediation is successful, the judge must help the parties prepare a written agreement, which the parties and judge must sign. Either party may enforce the agreement in court. The bill limits the disclosure of information obtained during the mediation.

The bill also potentially increases the maximum compensation of special assignment probate judges.

EFFECTIVE DATE: October 1, 2015

**PILOT MEDIATION PROGRAM*****Applicability***

Under the bill, the mediation program is available to unit owners or

associations of communities governed by the Common Interest Ownership Act (CIOA) or the Condominium Act (see BACKGROUND). The program is for mediating disputes concerning the application and interpretation of these acts or an association's bylaws, rules, or regulations.

Foreclosure disputes are ineligible. The program also does not apply to disputes between unit owners without association involvement.

The pilot program ends on September 30, 2018.

### ***Process to Request Mediation***

Under the bill, either a unit owner or association with an eligible dispute may request mediation. To do so, the owner or association must file a written request in the probate district where the unit is located, along with a \$250 filing fee. The request must (1) be on a form, which the probate court administrator may prescribe; (2) specifically describe the nature of the dispute; and (3) contain an attestation by both the unit owner and an association representative that his or her participation is voluntary.

### ***Mediation Process***

Under the bill, upon receiving a mediation request, the probate court must promptly notify the probate court administrator, who then must assign the matter to a special assignment probate judge with demonstrated mediation expertise. The court must set the time and place for mediation. It must send notice by regular mail to the association and unit owners identified in the request and may notify other persons.

The special assignment probate judge assigned to the matter must attempt to mediate a voluntary resolution of the dispute. The participating unit owners or association representative may withdraw from mediation at any time, after notifying all mediation participants and the special assignment probate judge. The judge may also 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 judge must help them prepare a written document that describes the agreement's specific terms. Both parties and the judge must sign it.

The bill provides that the parties' compliance with the written agreement is deemed an obligation imposed by CIOA or the Condominium Act, as applicable. Either party may bring an action in Superior Court to enforce it.

The bill also provides that its remedies 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. CIOA generally (1) requires associations to hold a hearing before bringing suit against a unit owner, (2) allows unit owners to request a hearing, and (3) specifically allows parties to resolve disputes through alternative dispute resolution (CGS §§ 47-75 & 47-278).

### ***Limits on Information Disclosure***

The bill generally prohibits mediation participants from (1) voluntarily disclosing any oral or written communication received or obtained during the mediation or (2) being required to disclose these communications through discovery or compulsory process. But these prohibitions do not apply if the other participants agree in writing to the disclosure or the disclosure is:

1. needed to enforce a written agreement resulting from the mediation;
2. required by statute, regulation, or a court, after notice to all participants; or
3. required because a court finds that the interest of justice outweighs the need for confidentiality, consistent with legal

principles.

### **SPECIAL ASSIGNMENT PROBATE JUDGE COMPENSATION**

By law, the probate court administrator sets the compensation for special assignment probate judges, subject to the chief court administrator's approval.

Currently, their compensation must not exceed the compensation of band 4 probate judges - i.e., 75% of a Superior Court judge's compensation. (Band 4 districts are those with the largest populations or workloads.) The bill instead sets their compensation at no more than the maximum compensation received by a workers' compensation commissioner.

By law, the salaries of workers' compensation commissioners are also tied to Superior Court judge salaries, on a schedule based on experience. A first-year compensation commissioner receives a salary \$6,000 less than the highest step level of a Superior Court judge. By the sixth year, a commissioner's salary is \$1,000 less than that level (CGS § 31-277).

### **BACKGROUND**

#### ***Special Assignment Probate Judges***

By law, the Supreme Court's chief justice appoints special assignment probate judges, nominated by the probate court administrator, from among current probate judges. A nominee must have demonstrated the special skill, experience, or expertise necessary to serve in this role (CGS § 45a-79b).

#### ***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 before January 1, 1984 but do not invalidate existing provisions of their governing instruments. Common interest

communities created before that date 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 et seq.) governs condominiums created from 1977 through 1983, except when CIOA applies.

**COMMITTEE ACTION**

Judiciary Committee

Joint Favorable

Yea 25    Nay 17    (03/27/2015)