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STATE OF RHODE ISLAND

IN GENERAL ASSEMBLY

JANUARY SESSION, A.D. 2015

A N A C T

RELATING TO PROPERTY -- CONDOMINIUM DISPUTE RESOLUTION

Introduced By: Representative Arthur J. Corvese

Date Introduced: February 12, 2015

Referred To: House Corporations

It is enacted by the General Assembly as follows:

1 SECTION 1. Title 34 of the General Laws entitled "PROPERTY" is hereby amended by
2 adding thereto the following chapter:

3 CHAPTER 36.2

4 CONDOMINIUM DISPUTE RESOLUTION

5 **34-36.2-1. Definitions.** -- (a) As used in this chapter, the term "dispute" means a
6 disagreement between two (2) or more parties that involves:

7 (1) The authority of the board of directors, under this chapter or association documents,
8 to:

9 (i) Require any owner to take any action, or not to take any action, involving that owner's
10 unit or the appurtenances thereto; or

11 (ii) Alter or add to a common area or element.

12 (2) The failure of a governing body, when required by chapter 36.1 of title 34 or an
13 association document, to:

14 (i) Properly conduct elections;

15 (ii) Give adequate notice of meetings or other actions;

16 (iii) Properly conduct meetings; or

17 (iv) Allow inspection of books and records.

18 (b) "Dispute" does not include any disagreement that primarily involves: title to any unit
19 or common element; the interpretation or enforcement of any warranty; the levy of a fee or

1 assessment, or the collection of an assessment levied against a party; the eviction or other
2 removal of a tenant from a unit; alleged breaches of fiduciary duty by one or more directors; or
3 claims for damages to a unit based upon the alleged failure of the association to maintain the
4 common elements or condominium property.

5 **34-36.2-2. Mandatory arbitration and/or mediation of condominium disputes. -- (a)**

6 Prior to the institution of court litigation, any party to a condominium dispute shall petition the
7 department of business regulation for arbitration. The petition must be accompanied by a filing
8 fee in the amount of fifty dollars (\$50.00). Filing fees collected under this section shall be used to
9 defray the expenses of this alternative dispute resolution program to be administered by the
10 department.

11 (1) The petition must recite, and have attached thereto, supporting proof that the
12 petitioner gave the respondents:

13 (i) Advance written notice of the specific nature of the dispute;

14 (ii) A demand for relief, and a reasonable opportunity to comply or to provide the relief;

15 and

16 (iii) Notice of the intention to file an arbitration petition or other legal action in the
17 absence of a resolution of the dispute.

18 (b) Failure to include the allegations or proof of compliance with these prerequisites
19 requires dismissal of the petition without prejudice.

20 (c)(1) Upon receipt, the petition shall be promptly reviewed by the department of
21 business regulation to determine the existence of a condominium dispute as defined by § 34-36.2-
22 1.

23 (2) Upon determination by the department that a dispute exists and that the petition
24 substantially meets the requirements of this section and any other applicable department
25 regulations, a copy of the petition shall forthwith be served by the department upon all
26 respondents.

27 (d) Any party may request that the arbitrator refer the matter to mediation. Arbitrators, on
28 their own initiative, may refer a dispute to mediation at any time.

29 (e) The department of business regulation shall employ attorneys to act as arbitrators and
30 mediators to help administer this chapter. The department may also certify attorneys, who are not
31 employed by the department, to act as arbitrators and mediators to conduct the arbitration
32 hearings and mediation sessions. No person may be employed by the department as an arbitrator
33 or mediator unless he or she is a member in good standing of the Rhode Island bar; provided,
34 however, that the director of the department of business regulation is also authorized to enter into

1 agreements with area accredited law schools to employ law students of suitable accomplishment
2 to conduct arbitrations and mediations.

3 (f) To help resolve a condominium dispute, arbitrators and mediators shall be assigned by
4 the department, after consultation with the parties.

5 (g) The department of business regulation shall promulgate rules and regulations to aid in
6 the administration of this chapter.

7 **34-36.2-3. Arbitration proceedings.** – (a) All arbitrations shall be conducted according
8 to rules and regulations promulgated by the department of business regulation. The filing of a
9 petition for arbitration shall toll the applicable statute of limitations.

10 (b) At the request of any party to the arbitration, the arbitrator shall issue subpoenas for
11 the attendance of witnesses and the production of books, records, documents, and other evidence.
12 Any party on whose behalf a subpoena is issued may apply to the court for orders compelling
13 such attendance and production. Subpoenas shall be served and shall be enforceable in the
14 manner provided by the Rhode Island Superior Court Rules of Civil Procedure. Discovery may,
15 in the discretion of the arbitrator, be permitted as provided by the Rhode Island Superior Court
16 Rules of Civil Procedure. Rules adopted by the department of business regulation may authorize
17 reasonable sanctions, except contempt, for a violation of the department's arbitration procedural
18 rules or for the failure of a party to comply with an arbitrator's non-final order.

19 (c) The arbitration decision shall be presented to the parties in writing. An arbitration
20 decision is final in those disputes in which the parties have agreed to be bound. An arbitration
21 decision is also final if a complaint for a trial de novo is not filed within thirty (30) days in the
22 Superior Court in the county in which the condominium is located. If such appellate judicial
23 proceedings are initiated, the final decision of the arbitrator shall be admissible in evidence in the
24 trial de novo.

25 (d) After the thirty (30) day appeal period has expired, any party to an arbitrators'
26 proceeding may seek to confirm the award pursuant to § 10-3-11.

27 **34-36.2-4. Mediation sessions.** – (a) The purpose of mediation, as provided for by this
28 chapter, is to present the parties with an opportunity to resolve their underlying dispute in good
29 faith, with a minimum expenditure of time and resources.

30 (b) If a case is referred to mediation, all parties shall attend a mediation conference,
31 scheduled by the mediator. If any party fails to attend a duly noticed mediation conference,
32 without the permission of the arbitrator or mediator, the arbitrator shall impose sanctions against
33 the party, including the striking of any pleadings filed, the entry of an order of dismissal or
34 default if appropriate, and the award of costs and attorneys' fees incurred by the other parties.

1 Unless otherwise agreed to by the parties or as provided by order of the arbitrator, a party is
2 deemed to have appeared at a mediation conference, by the physical presence of the party or its
3 representative, having full authority to settle without further consultation, provided that an
4 association may comply by having one or more representatives present with full authority to
5 negotiate a settlement and recommend that the board of administration ratify and approve such a
6 settlement within five (5) days from the date of the mediation conference.

7 (c) Mediation proceedings must generally be conducted in accordance with the
8 department's rules and regulations. They are privileged and confidential to the same extent as
9 court-ordered mediation. Persons who are not parties to the dispute are not allowed to attend the
10 mediation conference without the consent of all parties, with the exception of counsel for the
11 parties and corporate representatives designated to appear for a party. If the mediator declares an
12 impasse after a mediation conference(s) have been held, then the matter shall be returned to
13 arbitration for resolution. If both parties do not agree to continue with arbitration, the arbitrators
14 shall enter an order of dismissal, and either party may within twenty (20) days of the order, file a
15 complaint in the Superior court in the county in which the condominium is located.

16 SECTION 2. Section 42-14-2 of the General Laws in Chapter 42-14 entitled "Department
17 of Business Regulation" is hereby amended to read as follows:

18 **42-14-2. Functions of department.** -- (a) It shall be the function of the department of
19 business regulation:

20 (1) To regulate and control banking and insurance, foreign surety companies, sale of
21 securities, building and loan associations, fraternal benefit and beneficiary societies;

22 (2) To regulate and control the manufacture, transportation, possession, and sale of
23 alcoholic beverages;

24 (3) To license and regulate the manufacture and sale of articles of bedding, upholstered
25 furniture, and filling materials; and

26 (4) To supervise, administer, and regulate the resolution of condominium disputes
27 pursuant to the provisions of chapter 36.2 of title 34.

28 (b) Whenever any hearing is required or permitted to be held pursuant to law or
29 regulation of the department of business regulation, and whenever no statutory provision exists
30 providing that notice be given to interested parties prior to the hearing, no such hearing shall be
31 held without notice in writing being given at least ten (10) days prior to such hearing to all
32 interested parties. For purposes of this section, an "interested party" shall be deemed to include
33 the party subject to regulation hereunder, the Rhode Island consumers' council, and any party
34 entitled to appear at the hearing. Notice to the party that will be subject to regulation, the Rhode

1 Island consumers' council [Repealed] and any party who has made known his or her intention to
2 appear at the hearing shall be sufficient if it be in writing and mailed, first class mail, to the party
3 at his or her regular business address. Notice to the general public shall be sufficient hereunder if
4 it be by publication in a newspaper of general circulation in the municipality affected by the
5 regulation.

6 SECTION 3. This act shall take effect upon passage.

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EXPLANATION
BY THE LEGISLATIVE COUNCIL
OF

A N A C T
RELATING TO PROPERTY -- CONDOMINIUM DISPUTE RESOLUTION

1 This act would establish an arbitration and mediation process to resolve certain
2 condominium disputes, to be administered by the department of business regulation.

3 This act would take effect upon passage.

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