



February 18, 2019

HOUSE BILL No. 1138

DIGEST OF HB 1138 (Updated February 18, 2019 12:33 pm - DI 123)

Citations Affected: IC 32-25; IC 32-25.5.

Synopsis: Disputes involving homeowners associations. Provides that if either party requests mediation, mediation is mandatory. Provides that if neither party requests mediation, or if mediation is unsuccessful, a claimant may begin legal proceedings. Requires a mediator to be selected by the American Mediation Association. Requires a mediation to be conducted in compliance with the rules and procedures of the American Mediation Association. Makes corresponding amendments to the provisions regarding grievance resolutions involving condominium associations.

Effective: July 1, 2019.

Burton, Dvorak

January 7, 2019, read first time and referred to Committee on Judiciary.
February 18, 2019, amended, reported — Do Pass.

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February 18, 2019

First Regular Session of the 121st General Assembly (2019)

PRINTING CODE. Amendments: Whenever an existing statute (or a section of the Indiana Constitution) is being amended, the text of the existing provision will appear in this style type, additions will appear in **this style type**, and deletions will appear in ~~this style type~~.

Additions: Whenever a new statutory provision is being enacted (or a new constitutional provision adopted), the text of the new provision will appear in **this style type**. Also, the word **NEW** will appear in that style type in the introductory clause of each SECTION that adds a new provision to the Indiana Code or the Indiana Constitution.

Conflict reconciliation: Text in a statute in *this style type* or ~~this style type~~ reconciles conflicts between statutes enacted by the 2018 Regular and Special Session of the General Assembly.

HOUSE BILL No. 1138

A BILL FOR AN ACT to amend the Indiana Code concerning property.

Be it enacted by the General Assembly of the State of Indiana:

- 1 SECTION 1. IC 32-25-8.5-13, AS ADDED BY P.L.141-2015,
2 SECTION 5, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE
3 JULY 1, 2019]: Sec. 13. (a) The parties are considered to be at an
4 impasse if:
5 (1) the respondent does not request a meeting under section 11 of
6 this chapter;
7 (2) either party fails to attend a meeting agreed upon under
8 section 12 of this chapter; or
9 (3) the parties are unable to settle the claim at a meeting held
10 under section 12 of this chapter.
11 (b) Either party may, not later than ten (10) days after an impasse is
12 reached, request in writing that the other party submit the claim to
13 mediation ~~or binding arbitration.~~ **and the parties shall submit to**
14 **mediation.**
15 (c) ~~The party making the request under subsection (b) is responsible~~
16 ~~for the costs of the mediator or arbitrator.~~
17 SECTION 2. IC 32-25-8.5-14, AS ADDED BY P.L.141-2015,

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1 SECTION 5, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE
2 JULY 1, 2019]: Sec. 14. **(a)** If an impasse is reached, ~~and:~~

3 ~~(1) neither party requests mediation or arbitration; or~~

4 ~~(2) mediation or arbitration does not result in a settlement of the~~
5 ~~claim;~~

6 ~~the claimant a party may, begin legal proceedings. not later than ten~~
7 ~~(10) days after the impasse is reached, submit the matter to~~
8 ~~mediation by an impartial mediator to be selected by the American~~
9 ~~Mediation Association from a current listing of mediators from the~~
10 ~~National Academy of Distinguished Neutrals.~~

11 **(b) The mediation shall be conducted in accordance with the**
12 **rules and procedures of the American Mediation Association.**

13 **(c) The cost of the mediator and any other direct costs of the**
14 **mediation shall be equally divided by the parties engaged in the**
15 **mediation.**

16 **(d) Nothing in this section shall be construed to prohibit good**
17 **faith settlements voluntarily entered into by the parties.**

18 **(e) If neither party requests mediation, or if mediation is**
19 **unsuccessful, the claimant may begin legal proceedings.**

20 SECTION 3. IC 32-25-8.5-17, AS ADDED BY P.L.141-2015,
21 SECTION 5, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE
22 JULY 1, 2019]: Sec. 17. The board, on behalf of the association of
23 co-owners, and without the consent of the co-owners, may do any of the
24 following:

25 (1) Negotiate settlements of claims, **participate in mediation**
26 **hearings, or initiate** legal proceedings under this chapter.

27 (2) Execute settlement agreements, waivers, releases of claims, or
28 any other document resulting from application of this chapter.

29 SECTION 4. IC 32-25.5-5-12, AS ADDED BY P.L.141-2015,
30 SECTION 14, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE
31 JULY 1, 2019]: Sec. 12. ~~(a)~~ The parties are considered to be at an
32 impasse if:

33 (1) the respondent does not request a meeting under section 10 of
34 this chapter;

35 (2) either party fails to attend a meeting agreed upon under
36 section 11 of this chapter; or

37 (3) the parties are unable to settle the claim at a meeting held
38 under section 11 of this chapter.

39 **(b) Either party may, not later than ten (10) days after an impasse is**
40 **reached, request in writing to the other party that the other party submit**
41 **the claim to mediation or binding arbitration.**

42 **(c) The party making the request under subsection (b) is responsible**



1 for the costs of the mediator or arbitrator.

2 SECTION 5. IC 32-25.5-5-13, AS ADDED BY P.L.141-2015,
3 SECTION 14, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE
4 JULY 1, 2019]: Sec. 13. **(a)** If an impasse is reached, ~~and:~~

5 ~~(1) neither party requests mediation or arbitration; or~~

6 ~~(2) mediation or arbitration does not result in a settlement of the~~
7 ~~claim;~~

8 ~~the claimant may begin legal proceedings. a party may, not later than~~
9 ~~ten (10) days after the impasse is reached, submit the matter to~~
10 ~~mediation by an impartial mediator to be selected by the American~~
11 ~~Mediation Association from a current listing of mediators from the~~
12 ~~National Academy of Distinguished Neutrals.~~

13 **(b)** The mediation shall be conducted in accordance with the
14 rules and procedures of the American Mediation Association.

15 **(c)** The cost of the mediator and any other direct costs of the
16 mediation shall be equally divided by the parties engaged in the
17 mediation.

18 **(d)** Nothing in this section shall be construed to prohibit good
19 faith settlements voluntarily entered into by the parties.

20 **(e)** If neither party requests mediation, or if mediation is
21 unsuccessful, the claimant may begin legal proceedings.

22 SECTION 6. IC 32-25.5-5-14, AS ADDED BY P.L.141-2015,
23 SECTION 14, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE
24 JULY 1, 2019]: Sec. 14. **(a)** This section applies if a claim is settled
25 through negotiation ~~or mediation. or arbitration.~~

26 **(b)** The settlement of the claim must be documented in a written
27 agreement signed by each of the parties.

28 **(c)** If a party fails to abide by the settlement agreement signed under
29 subsection (b), the other party may begin legal proceedings without
30 again complying with this chapter.

31 **(d)** If a party who begins legal proceedings under subsection (c)
32 prevails in those legal proceedings, the party is entitled to recover from
33 the other party:

34 (1) court costs;

35 (2) attorney's fees; and

36 (3) all other reasonable costs incurred in enforcing the settlement
37 agreement.

38 SECTION 7. IC 32-25.5-5-16, AS ADDED BY P.L.141-2015,
39 SECTION 14, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE
40 JULY 1, 2019]: Sec. 16. The board, on behalf of the homeowners
41 association, and without the consent of the members of the
42 homeowners association, may do any of the following:



- 1 (1) Negotiate settlements of claims, ~~or legal proceedings~~
- 2 **participate in mediation hearings, or initiate legal proceedings**
- 3 under this chapter.
- 4 (2) Execute settlement agreements, waivers, releases of claims, or
- 5 any other documents resulting from application of this chapter.



COMMITTEE REPORT

Mr. Speaker: Your Committee on Judiciary, to which was referred House Bill 1138, has had the same under consideration and begs leave to report the same back to the House with the recommendation that said bill be amended as follows:

Delete AM 113802 adopted by the house judiciary committee on February 4, 2019.

Page 1, delete lines 1 through 17, begin a new paragraph and insert:
 "SECTION 1. IC 32-25-8.5-13, AS ADDED BY P.L.141-2015, SECTION 5, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2019]: Sec. 13. (a) The parties are considered to be at an impasse if:

- (1) the respondent does not request a meeting under section 11 of this chapter;
- (2) either party fails to attend a meeting agreed upon under section 12 of this chapter; or
- (3) the parties are unable to settle the claim at a meeting held under section 12 of this chapter.

(b) Either party may, not later than ten (10) days after an impasse is reached, request in writing that the other party submit the claim to mediation ~~or binding arbitration.~~ **and the parties shall submit to mediation.**

~~(c) The party making the request under subsection (b) is responsible for the costs of the mediator or arbitrator.~~

SECTION 2. IC 32-25-8.5-14, AS ADDED BY P.L.141-2015, SECTION 5, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2019]: Sec. 14. ~~(a) If an impasse is reached, and:~~

- ~~(1) neither party requests mediation or arbitration; or~~
- ~~(2) mediation or arbitration does not result in a settlement of the claim;~~

~~the claimant a party may, begin legal proceedings: not later than ten (10) days after the impasse is reached, submit the matter to mediation by an impartial mediator to be selected by the American Mediation Association from a current listing of mediators from the National Academy of Distinguished Neutrals.~~

(b) The mediation shall be conducted in accordance with the rules and procedures of the American Mediation Association.

(c) The cost of the mediator and any other direct costs of the mediation shall be equally divided by the parties engaged in the mediation.

(d) Nothing in this section shall be construed to prohibit good faith settlements voluntarily entered into by the parties.

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(e) If neither party requests mediation, or if mediation is unsuccessful, the claimant may begin legal proceedings.

SECTION 3. IC 32-25-8.5-17, AS ADDED BY P.L.141-2015, SECTION 5, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2019]: Sec. 17. The board, on behalf of the association of co-owners, and without the consent of the co-owners, may do any of the following:

(1) Negotiate settlements of claims, **participate in mediation hearings, or initiate** legal proceedings under this chapter.

(2) Execute settlement agreements, waivers, releases of claims, or any other document resulting from application of this chapter."

Page 2, delete lines 1 through 19.

Page 2, delete lines 35 through 42, begin a new paragraph and insert:

"SECTION 3. IC 32-25.5-5-13, AS ADDED BY P.L.141-2015, SECTION 14, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2019]: Sec. 13. **(a)** If an impasse is reached, ~~and:~~

~~(1) neither party requests mediation or arbitration; or~~

~~(2) mediation or arbitration does not result in a settlement of the claim;~~

~~the claimant may begin legal proceedings:~~ **a party may, not later than ten (10) days after the impasse is reached, submit the matter to mediation by an impartial mediator to be selected by the American Mediation Association from a current listing of mediators from the National Academy of Distinguished Neutrals.**

(b) The mediation shall be conducted in accordance with the rules and procedures of the American Mediation Association.

(c) The cost of the mediator and any other direct costs of the mediation shall be equally divided by the parties engaged in the mediation.

(d) Nothing in this section shall be construed to prohibit good faith settlements voluntarily entered into by the parties.

(e) If neither party requests mediation, or if mediation is unsuccessful, the claimant may begin legal proceedings."

Page 3, delete lines 1 through 35, begin a new paragraph and insert:

"SECTION 6. IC 32-25.5-5-14, AS ADDED BY P.L.141-2015, SECTION 14, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2019]: Sec. 14. (a) This section applies if a claim is settled through negotiation ~~or mediation. or arbitration.~~

(b) The settlement of the claim must be documented in a written agreement signed by each of the parties.

(c) If a party fails to abide by the settlement agreement signed under



subsection (b), the other party may begin legal proceedings without again complying with this chapter.

(d) If a party who begins legal proceedings under subsection (c) prevails in those legal proceedings, the party is entitled to recover from the other party:

- (1) court costs;
- (2) attorney's fees; and
- (3) all other reasonable costs incurred in enforcing the settlement agreement."

Page 3, line 41, delete "claims" and insert "claims,".

Page 3, line 41, strike "or".

Page 3, line 42, delete " arbitration hearings" and insert "**mediation hearings, or initiate legal proceedings**".

Renumber all SECTIONS consecutively.

and when so amended that said bill do pass.

(Reference is to HB 1138 as introduced and as amended by the house judiciary committee on February 4, 2019.)

TORR

Committee Vote: yeas 10, nays 0.

