

## **Chapter 309**

**(Senate Bill 856)**

AN ACT concerning

### **Courts and Judicial Proceedings – Maryland Mediation Confidentiality Act**

FOR the purpose of establishing that certain communications made in the course of and relating to certain mediations may not be disclosed by the mediators, parties to the mediations, or certain persons who participate in or are present for the mediations, under certain circumstances; establishing certain exceptions for certain communications; providing for the application of this Act; defining certain terms; providing that this Act may be cited as the Maryland Mediation Confidentiality Act; and generally relating to confidentiality of mediation communications.

BY adding to

Article – Courts and Judicial Proceedings

Section 3–1801 through 3–1806 to be under the new subtitle “Subtitle 18.

Maryland Mediation Confidentiality Act”

Annotated Code of Maryland

(2006 Replacement Volume and 2011 Supplement)

SECTION 1. BE IT ENACTED BY THE GENERAL ASSEMBLY OF MARYLAND, That the Laws of Maryland read as follows:

#### **Article – Courts and Judicial Proceedings**

#### **SUBTITLE 18. MARYLAND MEDIATION CONFIDENTIALITY ACT.**

**3–1801.**

**(A) IN THIS SUBTITLE THE FOLLOWING WORDS HAVE THE MEANINGS INDICATED.**

**(B) “MEDIATION” MEANS A PROCESS IN WHICH PARTIES WORK WITH ONE OR MORE IMPARTIAL MEDIATORS WHO ASSIST THE PARTIES IN REACHING A VOLUNTARY AGREEMENT FOR THE RESOLUTION OF A DISPUTE OR ISSUES THAT ARE PART OF A DISPUTE.**

**(C) (1) “MEDIATION COMMUNICATION” MEANS A COMMUNICATION, WHETHER BY SPEECH, WRITING, OR CONDUCT, MADE AS PART OF A MEDIATION.**

(2) “MEDIATION COMMUNICATION” INCLUDES A COMMUNICATION MADE FOR THE PURPOSE OF CONSIDERING, INITIATING, CONTINUING, RECONVENING, OR EVALUATING A MEDIATION OR A MEDIATOR.

(D) “MEDIATOR” MEANS AN INDIVIDUAL WHO:

(1) ASSISTS PARTIES IN REACHING THEIR OWN VOLUNTARY AGREEMENT FOR THE RESOLUTION OF A DISPUTE; AND

~~(2) HAS COMPLETED AT LEAST 40 HOURS OF BASIC MEDIATION TRAINING; AND~~

~~(3)~~ ADHERES TO THE MARYLAND STANDARD OF CONDUCT FOR MEDIATORS.

~~(D)~~ (E) “PARTY” MEANS A PERSON THAT PARTICIPATES IN A MEDIATION AND WHOSE AGREEMENT IS NECESSARY TO RESOLVE THE DISPUTE.

3-1802.

(A) EXCEPT AS PROVIDED IN SUBSECTION (B) OF THIS SECTION, THIS SUBTITLE APPLIES TO A MEDIATION IN WHICH ~~THE~~:

(1) THE PARTIES:

~~(1)~~ (I) ARE REQUIRED TO MEDIATE BY LAW OR ARE REFERRED TO MEDIATION BY AN ADMINISTRATIVE AGENCY OR ARBITRATOR; OR

~~(2)~~ (II) AGREE IN WRITING THAT THE MEDIATION COMMUNICATIONS WILL REMAIN CONFIDENTIAL; AND

(2) THE MEDIATOR STATES IN WRITING TO ANY AND ALL PARTIES TO THE MEDIATION THAT THE MEDIATOR HAS READ AND, CONSISTENT WITH STATE LAW, WILL ABIDE BY THE MARYLAND STANDARD OF CONDUCT FOR MEDIATORS DURING THE MEDIATION.

(B) THIS SUBTITLE DOES NOT APPLY TO A MEDIATION:

(1) TO WHICH TITLE 17 OF THE MARYLAND RULES APPLIES;

(2) RELATING TO THE ESTABLISHMENT, NEGOTIATION, ADMINISTRATION, OR TERMINATION OF A COLLECTIVE BARGAINING RELATIONSHIP;

(3) RELATING TO A DISPUTE THAT IS PENDING UNDER, OR IS PART OF THE PROCESSES ESTABLISHED BY, A COLLECTIVE BARGAINING AGREEMENT UNLESS THE DISPUTE HAS BEEN FILED WITH AN ADMINISTRATIVE AGENCY OR COURT;

(4) RELATING TO AN ACTION TO ENFORCE AN AGREEMENT TO ARBITRATE UNDER COMMON LAW, THE FEDERAL ARBITRATION ACT, THE MARYLAND UNIFORM ARBITRATION ACT UNDER SUBTITLE 2 OF THIS TITLE, OR THE MARYLAND INTERNATIONAL COMMERCIAL ARBITRATION ACT UNDER SUBTITLE 2B OF THIS TITLE;

(5) RELATING TO AN ACTION TO FORECLOSE A LIEN AGAINST AN OWNER-OCCUPIED RESIDENTIAL PROPERTY SUBJECT TO FORECLOSURE MEDIATION CONDUCTED BY THE OFFICE OF ADMINISTRATIVE HEARINGS UNDER MARYLAND RULE 14-209.1;

(6) ARISING FROM A REFERRAL OF A MATTER TO A MASTER, EXAMINER, AUDITOR, OR PARENTING COORDINATOR UNDER MARYLAND RULES 2-541, 2-542, 2-543, OR 9-205.2;

(7) CONDUCTED BY A JUDGE WHO MIGHT MAKE A RULING ON A CASE BASED ON THE DISPUTE; OR

(8) IN WHICH THE PARTIES AND THE MEDIATOR, BY A WRITTEN AND SIGNED AGREEMENT MADE IN ADVANCE OF THE MEDIATION, AGREE TO EXCLUDE ALL OR PART OF THE MEDIATION COMMUNICATIONS FROM THE APPLICATION OF THIS SUBTITLE.

**3-1803.**

(A) EXCEPT AS PROVIDED IN § 3-1804 OF THIS SUBTITLE, A MEDIATOR OR ANY PERSON PRESENT OR OTHERWISE PARTICIPATING IN A MEDIATION AT THE REQUEST OF A MEDIATOR:

(1) SHALL MAINTAIN THE CONFIDENTIALITY OF ALL MEDIATION COMMUNICATIONS; AND

(2) MAY NOT DISCLOSE OR BE COMPELLED TO DISCLOSE MEDIATION COMMUNICATIONS IN ANY JUDICIAL, ADMINISTRATIVE, OR OTHER PROCEEDING.

(B) EXCEPT AS PROVIDED IN § 3-1804 OF THIS SUBTITLE:

**(1) A PARTY TO A MEDIATION AND ANY PERSON PRESENT OR OTHERWISE PARTICIPATING IN THE MEDIATION AT THE REQUEST OF A PARTY MAY NOT DISCLOSE OR BE COMPELLED TO DISCLOSE MEDIATION COMMUNICATIONS IN ANY JUDICIAL, ADMINISTRATIVE, OR OTHER PROCEEDING; AND**

**(2) THE PARTIES MAY ENTER INTO A WRITTEN AGREEMENT TO MAINTAIN THE CONFIDENTIALITY OF ALL MEDIATION COMMUNICATIONS AND MAY REQUIRE ANY PERSON PRESENT OR OTHERWISE PARTICIPATING IN THE MEDIATION AT THE REQUEST OF A PARTY TO MAINTAIN THE CONFIDENTIALITY OF ALL MEDIATION COMMUNICATIONS;~~AND~~**

~~**(2) ANY PERSON PRESENT OR OTHERWISE PARTICIPATING IN THE MEDIATION AT THE REQUEST OF A PARTY MAY NOT DISCLOSE OR BE COMPELLED TO DISCLOSE MEDIATION COMMUNICATIONS IN ANY JUDICIAL, ADMINISTRATIVE, OR OTHER PROCEEDING.**~~

**3-1804.**

**(A) A DOCUMENT SIGNED BY THE PARTIES THAT RECORDS POINTS OF AGREEMENT EXPRESSED BY THE PARTIES OR THAT CONSTITUTES AN AGREEMENT REACHED BY THE PARTIES AS A RESULT OF MEDIATION IS NOT CONFIDENTIAL UNLESS THE PARTIES AGREE OTHERWISE IN WRITING.**

**(B) IN ADDITION TO ANY OTHER DISCLOSURE REQUIRED BY LAW, A MEDIATOR, A PARTY, OR A PERSON WHO WAS PRESENT OR WHO OTHERWISE PARTICIPATED IN A MEDIATION AT THE REQUEST OF THE MEDIATOR OR A PARTY MAY DISCLOSE MEDIATION COMMUNICATIONS:**

**(1) TO A POTENTIAL VICTIM OR TO THE APPROPRIATE LAW ENFORCEMENT AUTHORITY TO THE EXTENT THAT THE MEDIATOR, PARTY, OR PERSON REASONABLY BELIEVES THE DISCLOSURE IS NECESSARY TO PREVENT ~~SERIOUS~~ BODILY HARM OR DEATH TO THE POTENTIAL VICTIM;**

**(2) TO THE EXTENT NECESSARY TO ASSERT OR DEFEND AGAINST ALLEGATIONS OF MEDIATOR MISCONDUCT OR NEGLIGENCE;**

**(3) TO THE EXTENT NECESSARY TO ASSERT OR DEFEND AGAINST ALLEGATIONS OF PROFESSIONAL MISCONDUCT OR MALPRACTICE BY A PARTY OR ANY PERSON WHO WAS PRESENT OR WHO OTHERWISE PARTICIPATED IN THE MEDIATION AT THE REQUEST OF A PARTY, EXCEPT THAT A MEDIATOR MAY NOT BE COMPELLED TO PARTICIPATE IN A PROCEEDING ARISING OUT OF THE DISCLOSURE; OR**

(4) TO THE EXTENT NECESSARY TO ASSERT OR DEFEND AGAINST A CLAIM OR DEFENSE THAT, BECAUSE OF FRAUD, DURESS, OR MISREPRESENTATION, A CONTRACT ARISING OUT OF A MEDIATION SHOULD BE RESCINDED OR DAMAGES SHOULD BE AWARDED.

(c) A COURT MAY ORDER MEDIATION COMMUNICATIONS TO BE DISCLOSED ONLY TO THE EXTENT THAT THE COURT DETERMINES THAT THE DISCLOSURE IS NECESSARY TO PREVENT ~~A MANIFEST~~ AN INJUSTICE OR HARM TO THE PUBLIC INTEREST THAT IS OF SUFFICIENT MAGNITUDE IN THE PARTICULAR CASE TO OUTWEIGH THE INTEGRITY OF MEDIATION PROCEEDINGS ~~IN GENERAL BY REDUCING THE CONFIDENCE OF PARTIES IN FUTURE CASES THAT THEIR COMMUNICATIONS WILL REMAIN CONFIDENTIAL.~~

3-1805.

MEDIATION COMMUNICATIONS THAT ARE CONFIDENTIAL UNDER THIS SUBTITLE ARE NOT SUBJECT TO DISCOVERY, BUT INFORMATION THAT IS OTHERWISE ADMISSIBLE OR SUBJECT TO DISCOVERY DOES NOT BECOME INADMISSIBLE OR PROTECTED FROM DISCLOSURE SOLELY BY REASON OF ITS USE IN MEDIATION.

3-1806.

THIS SUBTITLE MAY BE CITED AS THE MARYLAND MEDIATION CONFIDENTIALITY ACT.

SECTION 2. AND BE IT FURTHER ENACTED, That this Act shall take effect October 1, 2012.

Approved by the Governor, May 2, 2012.