

First Regular Session
Seventy-fifth General Assembly
STATE OF COLORADO

INTRODUCED

LLS NO. 25-0200.02 Chelsea Princell x4335

HOUSE BILL 25-1123

HOUSE SPONSORSHIP

Ricks and Joseph,

SENATE SPONSORSHIP

(None),

House Committees
Judiciary

Senate Committees

A BILL FOR AN ACT

101 CONCERNING ALTERNATIVE DISPUTE RESOLUTION FOR DISPUTES THAT
102 ARISE BETWEEN A UNIT OWNER AND A UNIT OWNERS'
103 ASSOCIATION.

Bill Summary

(Note: This summary applies to this bill as introduced and does not reflect any amendments that may be subsequently adopted. If this bill passes third reading in the house of introduction, a bill summary that applies to the reengrossed version of this bill will be available at <http://leg.colorado.gov>.)

Under current law, common interest communities are encouraged to use mediation prior to filing a complaint with the court. The bill requires a dispute between a unit owner and a unit owners' association to go through an internal dispute resolution process and mediation before the parties can file a complaint with the court. If the parties are unable to

Shading denotes HOUSE amendment. Double underlining denotes SENATE amendment.
Capital letters or bold & italic numbers indicate new material to be added to existing law.
Dashes through the words or numbers indicate deletions from existing law.

reach a mediation agreement, the bill allows the parties to undergo arbitration or commence a legal proceeding.

1 *Be it enacted by the General Assembly of the State of Colorado:*

2 **SECTION 1.** In Colorado Revised Statutes, **repeal and reenact,**
3 **with amendments,** 38-33.3-124 as follows:

4 **38-33.3-124. Legislative declaration - purpose - mandatory**
5 **alternative dispute resolution - definitions.** (1) THE GENERAL
6 ASSEMBLY FINDS AND DECLARES THAT THE PURPOSE OF THIS SECTION IS TO
7 PROVIDE AN EFFICIENT, FAIR, AND COST-EFFECTIVE PROCESS FOR
8 RESOLVING DISPUTES BETWEEN A UNIT OWNER AND A UNIT OWNERS'
9 ASSOCIATION WHILE PRESERVING THE INTEGRITY OF COMMUNITY
10 RELATIONSHIPS AND MINIMIZING THE BURDEN ON THE JUDICIAL SYSTEM.

11 (2) AS USED IN THIS SECTION, UNLESS THE CONTEXT OTHERWISE
12 REQUIRES:

13 (a) "ARBITRATION" MEANS A BINDING PROCESS IN WHICH AN
14 ARBITRATOR HEARS THE FACTS OF THE DISPUTE AND ISSUES A FINAL
15 DECISION THAT IS ENFORCEABLE BY LAW.

16 (b) "DISPUTE" MEANS ANY CONFLICT, CLAIM, OR DISAGREEMENT
17 BETWEEN A UNIT OWNER AND A UNIT OWNERS' ASSOCIATION REGARDING
18 THE INTERPRETATION, ENFORCEMENT, OR APPLICATION OF THE COMMON
19 INTEREST COMMUNITY'S GOVERNING DOCUMENTS, POLICIES, OR ACTIONS.
20 "DISPUTE" DOES NOT INCLUDE A CONFLICT, CLAIM, OR DISAGREEMENT
21 FILED PURSUANT TO PART 8 OF ARTICLE 20 OF TITLE 13, OR DISAGREEMENT
22 THAT INVOLVES A DECLARANT OR AN AFFILIATE OF A DECLARANT.

23 (c) "INTERNAL DISPUTE RESOLUTION" MEANS A PROCESS FOR
24 RESOLVING CONFLICTS BETWEEN A UNIT OWNER AND A UNIT OWNERS'
25 ASSOCIATION.

1 (d) "MEDIATION" MEANS A PROCESS THROUGH WHICH PARTIES
2 INVOLVED IN A DISPUTE CONCERNING MATTERS ARISING UNDER THIS
3 ARTICLE 33.3 MEET WITH A MEDIATOR TO DISCUSS THE MATTER, DEFINING
4 AND ARTICULATING THE ISSUES AND THEIR POSITIONS ON THE ISSUES, WITH
5 A GOAL OF RESOLVING THE DISPUTE.

6 (e) "MEDIATOR" MEANS AN INDIVIDUAL WHO IS TRAINED TO ASSIST
7 THE PARTIES IN REACHING A MUTUALLY ACCEPTABLE RESOLUTION OF THE
8 PARTIES' DISPUTES THROUGH THE IDENTIFICATION AND EVALUATION OF
9 ALTERNATIVES.

10 (3) A DISPUTE BETWEEN A UNIT OWNER AND A UNIT OWNERS'
11 ASSOCIATION ARISING UNDER THE PROVISIONS OF THIS ARTICLE 33.3 MUST
12 UNDERGO INTERNAL DISPUTE RESOLUTION AND, IF NECESSARY, MEDIATION
13 PRIOR TO THE COMMENCEMENT OF A LEGAL PROCEEDING.

14 (4) (a) IN THE EVENT OF A DISPUTE BETWEEN A UNIT OWNER AND
15 A UNIT OWNERS' ASSOCIATION, EITHER PARTY MAY SUBMIT A WRITTEN
16 REQUEST TO THE OTHER PARTY TO THE DISPUTE REQUESTING INTERNAL
17 DISPUTE RESOLUTION. THE WRITTEN REQUEST MUST INCLUDE:

18 (I) A BRIEF DESCRIPTION OF THE DISPUTE BETWEEN THE PARTIES;

19 (II) A NOTICE THAT THE PARTY RECEIVING THE REQUEST FOR
20 RESOLUTION IS REQUIRED TO RESPOND WITHIN THIRTY DAYS AFTER
21 RECEIPT OR THE REQUEST WILL BE DEEMED REJECTED; AND

22 (III) IF THE PARTY UPON WHOM THE REQUEST IS BEING SERVED IS
23 THE UNIT OWNER, A COPY OF THIS SECTION.

24 (b) SERVICE OF THE REQUEST DESCRIBED IN SUBSECTION (4)(a) OF
25 THIS SECTION MUST BE MADE THROUGH PERSONAL DELIVERY, FIRST-CLASS
26 MAIL, EXPRESS MAIL, FACSIMILE TRANSMISSION, OR OTHER MEANS
27 REASONABLY CALCULATED TO PROVIDE THE PARTY UPON WHOM THE

1 REQUEST IS SERVED ACTUAL NOTICE OF THE REQUEST.

2 (c) (I) A PARTY UPON WHOM A REQUEST IS SERVED HAS THIRTY
3 DAYS FOLLOWING SERVICE TO ACCEPT OR REJECT THE REQUEST. IF A
4 PARTY DOES NOT ACCEPT THE REQUEST WITHIN THIRTY DAYS, THE
5 REQUEST IS DEEMED REJECTED BY THE PARTY.

6 (II) IF A PARTY REJECTS A REQUEST TO PARTICIPATE IN INTERNAL
7 DISPUTE RESOLUTION, THE PARTIES MUST SIGN A WRITTEN STATEMENT
8 DETAILING THAT THE PARTIES ARE UNABLE TO PARTICIPATE IN INTERNAL
9 DISPUTE RESOLUTION AND STATE WHICH PARTY REFUSED TO PARTICIPATE
10 IN THE INTERNAL DISPUTE RESOLUTION MEETING.

11 (III) IF A PARTY REJECTS A REQUEST TO PARTICIPATE IN INTERNAL
12 DISPUTE RESOLUTION OR DOES NOT RESPOND TO THE REQUEST, EITHER
13 PARTY MAY START A LEGAL PROCEEDING.

14 (IV) THE STATEMENT MUST BE FILED WITH THE COURT IF THE
15 PARTIES START A LEGAL PROCEEDING. IF THE DISPUTE PROCEEDS TO
16 COURT, THE COURT MAY TAKE THE PARTY'S REFUSAL TO PARTICIPATE IN
17 AN INTERNAL DISPUTE RESOLUTION MEETING INTO CONSIDERATION IN
18 DETERMINING AN AWARD FOR ATTORNEY FEES.

19 (d) IF THE PARTY UPON WHOM THE REQUEST IS SERVED ACCEPTS
20 PARTICIPATION IN DISPUTE RESOLUTION, THE PARTIES MUST SET A
21 MUTUALLY AGREED UPON DATE AND TIME FOR AN INTERNAL DISPUTE
22 RESOLUTION MEETING. IF EITHER PARTY INTENDS TO BE REPRESENTED BY
23 AN ATTORNEY AT THE INTERNAL DISPUTE RESOLUTION MEETING, THAT
24 PARTY MUST NOTIFY THE OTHER PARTY AT LEAST FORTY-EIGHT HOURS
25 PRIOR TO THE INTERNAL DISPUTE RESOLUTION MEETING THAT THEY WILL
26 BE REPRESENTED BY AN ATTORNEY. IF A PARTY FAILS TO PROVIDE
27 ADVANCE NOTICE OF A PARTY'S INTENT TO BE REPRESENTED BY AN

1 ATTORNEY AT THE INTERNAL DISPUTE RESOLUTION MEETING, THE
2 INTERNAL DISPUTE RESOLUTION MEETING MUST BE RESCHEDULED IF THE
3 PARTY WHO DID NOT RECEIVE ADVANCE NOTICE REQUESTS THE MEETING
4 BE RESCHEDULED.

5 (5) (a) IF THE PARTIES ARE UNABLE TO RESOLVE THE DISPUTE
6 THROUGH INTERNAL DISPUTE RESOLUTION PURSUANT TO SUBSECTION (3)
7 OF THIS SECTION, THE PARTIES MUST UNDERGO MEDIATION PRIOR TO
8 STARTING A LEGAL PROCEEDING.

9 (b) THE ASSOCIATION MUST PROVIDE THE UNIT OWNER WITH
10 NOTICE OF MEDIATION WITHIN FOURTEEN DAYS AFTER THE COMPLETION
11 OF THE INTERNAL DISPUTE RESOLUTION MEETING.

12 (c) MEDIATION MUST TAKE PLACE WITHIN THIRTY DAYS AFTER THE
13 UNIT OWNER RECEIVES NOTICE OF MEDIATION.

14 (d) THE MEDIATOR ASSIGNED TO CARRY OUT THE MEDIATION MUST
15 BE AN IMPARTIAL THIRD PARTY AND MUST BE APPROVED BY BOTH PARTIES.

16 (e) (I) IF THE PARTIES CANNOT REACH A MEDIATION AGREEMENT
17 WITHIN FOURTEEN DAYS AFTER MEDIATION BEGINS, THE MEDIATION
18 PROCESS IS CONSIDERED UNSUCCESSFUL AND THE PARTIES MAY PROCEED
19 TO ARBITRATION OR MAY COMMENCE A LEGAL PROCEEDING.

20 (II) IF MEDIATION IS UNSUCCESSFUL, THE MEDIATOR MUST ISSUE
21 A CERTIFICATE OF COMPLIANCE STATING THAT ONE OR MORE OF THE
22 FOLLOWING CONDITIONS ARE MET:

23 (A) THE PARTIES PARTICIPATED IN MEDIATION IN GOOD FAITH AND
24 WERE UNABLE TO REACH A MEDIATION AGREEMENT;

25 (B) ONE PARTY REFUSED TO PARTICIPATE IN MEDIATION; OR

26 (C) THE DISPUTE IS EXEMPT FROM THE REQUIREMENTS OF THIS
27 SECTION PURSUANT TO SUBSECTION (6) OF THIS SECTION.

1 (III) THE PARTY STARTING A LEGAL PROCEEDING MUST INCLUDE
2 THE CERTIFICATE OF COMPLIANCE WHEN FILING WITH THE COURT.

3 (IV) FAILURE TO FILE A CERTIFICATE OF COMPLIANCE WHEN
4 STARTING A LEGAL ACTION IS GROUNDS FOR AN OBJECTION OR A MOTION
5 TO STRIKE, UNLESS THE COURT FINDS THAT DISMISSAL OF THE ACTION FOR
6 FAILURE TO COMPLY WOULD RESULT IN SUBSTANTIAL PREJUDICE TO ONE
7 OF THE PARTIES.

8 (f) IF A MEDIATION AGREEMENT IS REACHED, THE TERMS OF THE
9 MEDIATION AGREEMENT MUST BE IN WRITING AND SIGNED BY BOTH
10 PARTIES AND THE MEDIATION AGREEMENT IS ENFORCEABLE AS A
11 CONTRACT.

12 (g) THE COST OF MEDIATION MUST BE SHARED EQUALLY BETWEEN
13 THE UNIT OWNER AND THE ASSOCIATION, UNLESS OTHERWISE AGREED
14 UPON BY THE PARTIES.

15 (6) THE REQUIREMENTS OF THIS SECTION DO NOT APPLY TO THE
16 FOLLOWING:

17 (a) A DISPUTE INVOLVING A VIOLATION OF LOCAL, STATE, OR
18 FEDERAL LAW;

19 (b) A DISPUTE INVOLVING A CLAIM OF DISCRIMINATION,
20 HARASSMENT, OR OTHER CIVIL RIGHTS VIOLATION;

21 (c) A CASE IN WHICH ONE PARTY SEEKS EMERGENCY RELIEF OR
22 INJUNCTIVE RELIEF FROM THE COURT; OR

23 (d) A DISPUTE THAT HAS ALREADY BEEN ADJUDICATED IN COURT
24 OR THROUGH ARBITRATION.

25 (7) A UNIT OWNERS' ASSOCIATION SHALL, ON AN ANNUAL BASIS,
26 PROVIDE WRITTEN NOTICE TO EACH OF ITS UNIT OWNERS STATING THAT
27 THE FAILURE OF A UNIT OWNER TO COMPLY WITH THE ALTERNATIVE

1 DISPUTE RESOLUTION REQUIREMENTS OF THIS SECTION MAY RESULT IN THE
2 LOSS OF THE UNIT OWNER'S RIGHT TO SUE THE UNIT OWNERS' ASSOCIATION
3 REGARDING ENFORCEMENT OF THE GOVERNING DOCUMENTS OR
4 APPLICABLE LAW.

5 **SECTION 2. Safety clause.** The general assembly finds,
6 determines, and declares that this act is necessary for the immediate
7 preservation of the public peace, health, or safety or for appropriations for
8 the support and maintenance of the departments of the state and state
9 institutions.