

HOUSE BILL No. 1138

DIGEST OF INTRODUCED BILL

Citations Affected: IC 32-25.5-5.

Synopsis: Arbitration for homeowners association disputes. Requires that certain disputes involving homeowners associations, if not resolved through an informal grievance process, be resolved through binding arbitration. Repeals provisions that permit a claimant to initiate a legal proceeding to seek redress or resolution of a claim involving a homeowners association.

Effective: July 1, 2019.

Burton

January 7, 2019, read first time and referred to Committee on Judiciary.



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 32-25.5-5-4, AS ADDED BY P.L.141-2015,
2 SECTION 14, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE
3 JULY 1, 2019]: Sec. 4. As used in this chapter, "exempt claim" refers
4 to any of the following claims or actions:
5 (1) A claim by the homeowners association for assessments or
6 dues and any action by the association to collect assessments or
7 dues.
8 (2) An action by a party to obtain a temporary restraining order or
9 equivalent emergency equitable relief:
10 (A) to maintain the status quo and preserve the party's ability
11 to enforce the governing documents; or
12 (B) when an emergency condition exists that jeopardizes the
13 health or safety of any of the residents within the community
14 governed by the homeowners association.
15 (3) ~~A suit to which an applicable statute of limitations would~~
16 ~~expire within the notice period. This subdivision does not apply~~
17 ~~if a party against which the claim is made agrees to toll the statute~~



1 of limitations as to the claim for the period reasonably necessary
2 to comply with this chapter.

3 ~~(4)~~ (3) A dispute that is subject to mediation, arbitration, or other
4 alternate dispute resolution under applicable law, contract,
5 warranty agreement, or other instrument.

6 ~~(5)~~ (4) A claim that is substantively identical to a claim:

7 (A) that was previously addressed by the parties; or

8 (B) that was resolved by a judicial determination in favor of
9 one (1) of the parties.

10 SECTION 2. IC 32-25.5-5-5 IS REPEALED [EFFECTIVE JULY
11 1, 2019]. Sec. 5: As used in this chapter, "legal proceedings" refers to
12 either of the following:

13 ~~(1)~~ An action maintained in a court.

14 ~~(2)~~ An administrative proceeding initiated under an applicable
15 law.

16 SECTION 3. IC 32-25.5-5-9 IS REPEALED [EFFECTIVE JULY
17 1, 2019]. Sec. 9: A claimant may not initiate a legal proceeding seeking
18 redress or resolution of a claim until the claimant has complied with the
19 procedures described in this chapter.

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

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

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

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

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

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

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

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

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

41 the claimant may begin legal proceedings. **must, not later than ten**
42 **(10) days after the impasse is reached, submit the matter to final**



1 **and binding arbitration by an impartial arbitrator to be selected**
 2 **by the American Arbitration Association from a current listing of**
 3 **arbitrators from the National Academy of Arbitrators.**

4 **(b) The arbitration shall be conducted in accordance with the**
 5 **rules and procedures of the American Arbitration Association.**

6 **(c) The cost of the arbitrator and any other direct costs of the**
 7 **arbitration shall be equally divided by the parties engaged in the**
 8 **arbitration.**

9 **(d) The arbitrator shall render a decision not later than thirty**
 10 **(30) days after the conclusion of the arbitration unless this time**
 11 **period is extended by mutual agreement of the parties or by the**
 12 **arbitrator. The decision of the arbitrator is final and binding on all**
 13 **parties. Under no circumstances may the parties appeal the**
 14 **decision of the arbitrator.**

15 **(e) A party who fails to participate in the arbitration hearings**
 16 **waives all rights the party would have had in the arbitration and**
 17 **is considered to have consented to the determination of the**
 18 **arbitrator.**

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

21 SECTION 6. IC 32-25.5-5-14 IS REPEALED [EFFECTIVE JULY
 22 1, 2019]. Sec. 14: (a) This section applies if a claim is settled through
 23 negotiation, mediation, or arbitration.

24 **(b) The settlement of the claim must be documented in a written**
 25 **agreement signed by each of the parties:**

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

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

32 **(1) court costs;**

33 **(2) attorney's fees; and**

34 **(3) all other reasonable costs incurred in enforcing the settlement**
 35 **agreement.**

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

41 **(1) Negotiate settlements of claims or ~~legal proceedings~~**
 42 **participate in arbitration hearings under this chapter.**



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

