

1 AN ACT concerning mediation.

2 Be it enacted by the People of the State of Illinois,
3 represented in the General Assembly:

4 Section 1. Title. This Act may be cited as the Uniform
5 Mediation Act.

6 Section 2. Definitions. In this Act:

7 (1) "Mediation" means a process in which a mediator
8 facilitates communication and negotiation between parties
9 to assist them in reaching a voluntary agreement
10 regarding their dispute.

11 (2) "Mediation communication" means a statement,
12 whether oral or in a record or verbal or nonverbal, that
13 occurs during a mediation or is made for purposes of
14 considering, conducting, participating in, initiating,
15 continuing, or reconvening a mediation or retaining a
16 mediator.

17 (3) "Mediator" means an individual who conducts a
18 mediation.

19 (4) "Nonparty participant" means a person, other
20 than a party or mediator, that participates in a
21 mediation.

22 (5) "Mediation party" means a person that
23 participates in a mediation and whose agreement is
24 necessary to resolve the dispute.

25 (6) "Person" means an individual, corporation,
26 business trust, estate, trust, partnership, limited
27 liability company, association, joint venture,
28 government, governmental subdivision, agency, or
29 instrumentality, public corporation, or any other legal
30 or commercial entity.

31 (7) "Proceeding" means:

1 (A) a judicial, administrative, arbitral, or
 2 other adjudicative process, including related
 3 pre-hearing and post-hearing motions, conferences,
 4 and discovery; or

5 (B) a legislative hearing or similar process.

6 (8) "Record" means information that is inscribed on
 7 a tangible medium or that is stored in an electronic or
 8 other medium and is retrievable in perceivable form.

9 (9) "Sign" means:

10 (A) to execute or adopt a tangible symbol with
 11 the present intent to authenticate a record; or

12 (B) to attach or logically associate an
 13 electronic symbol, sound, or process to or with a
 14 record with the present intent to authenticate a
 15 record.

16 Section 3. Scope.

17 (a) Except as otherwise provided in subsection (b) or
 18 (c), this Act applies to a mediation in which:

19 (1) the mediation parties are required to mediate
 20 by statute or court or administrative agency rule or
 21 referred to mediation by a court, administrative agency,
 22 or arbitrator;

23 (2) the mediation parties and the mediator agree to
 24 mediate in a record that demonstrates an expectation that
 25 mediation communications will be privileged against
 26 disclosure; or

27 (3) the mediation parties use as a mediator an
 28 individual who holds himself or herself out as a
 29 mediator, or the mediation is provided by a person that
 30 holds itself out as providing mediation.

31 (b) The Act does not apply to a mediation:

32 (1) relating to the establishment, negotiation,
 33 administration, or termination of a collective bargaining

1 relationship;

2 (2) relating to a dispute that is pending under or
3 is part of the processes established by a collective
4 bargaining agreement, except that the Act applies to a
5 mediation arising out of a dispute that has been filed
6 with an administrative agency or court;

7 (3) conducted by a judge who might make a ruling on
8 the case; or

9 (4) conducted under the auspices of:

10 (A) a primary or secondary school if all the
11 parties are students; or

12 (B) a correctional institution for youths if
13 all the parties are residents of that institution.

14 (c) If the parties agree in advance in a signed record,
15 or a record of proceeding reflects agreement by the parties,
16 that all or part of a mediation is not privileged, the
17 privileges under Sections 4 through 6 do not apply to the
18 mediation or part agreed upon. However, Sections 4 through 6
19 apply to a mediation communication made by a person that has
20 not received actual notice of the agreement before the
21 communication is made.

22 Section 4. Privilege against disclosure; admissibility;
23 discovery.

24 (a) Except as otherwise provided in Section 6, a
25 mediation communication is privileged as provided in
26 subsection (b) and is not subject to discovery or admissible
27 in evidence in a proceeding unless waived or precluded as
28 provided by Section 5.

29 (b) In a proceeding, the following privileges apply:

30 (1) A mediation party may refuse to disclose, and
31 may prevent any other person from disclosing, a mediation
32 communication.

33 (2) A mediator may refuse to disclose a mediation

1 communication, and may prevent any other person from
2 disclosing a mediation communication of the mediator.

3 (3) A nonparty participant may refuse to disclose,
4 and may prevent any other person from disclosing, a
5 mediation communication of the nonparty participant.

6 (c) Evidence or information that is otherwise admissible
7 or subject to discovery does not become inadmissible or
8 protected from discovery solely by reason of its disclosure
9 or use in a mediation.

10 Section 5. Waiver and preclusion of privilege.

11 (a) A privilege under Section 4 may be waived in a
12 record or orally during a proceeding if it is expressly
13 waived by all parties to the mediation and:

14 (1) in the case of the privilege of a mediator, it
15 is expressly waived by the mediator; and

16 (2) in the case of the privilege of a nonparty
17 participant, it is expressly waived by the nonparty
18 participant.

19 (b) A person that discloses or makes a representation
20 about a mediation communication which prejudices another
21 person in a proceeding is precluded from asserting a
22 privilege under Section 4, but only to the extent necessary
23 for the person prejudiced to respond to the representation or
24 disclosure.

25 (c) A person that intentionally uses a mediation to
26 plan, attempt to commit or commit a crime, or to conceal an
27 ongoing crime or ongoing criminal activity is precluded from
28 asserting a privilege under Section 4.

29 Section 6. Exceptions to privilege.

30 (a) There is no privilege under Section 4 for a
31 mediation communication that is:

32 (1) in an agreement evidenced by a record signed by

1 all parties to the agreement;

2 (2) available to the public under the Freedom of
3 Information Act or made during a session or a mediation
4 which is open, or is required by law to be open, to the
5 public;

6 (3) a threat or statement of a plan to inflict
7 bodily injury or commit a crime of violence;

8 (4) intentionally used to plan a crime, attempt to
9 commit a crime, or to conceal an ongoing crime or ongoing
10 criminal activity;

11 (5) sought or offered to prove or disprove a claim
12 or complaint of professional misconduct or malpractice
13 filed against a mediator;

14 (6) except as otherwise provided in subsection (c),
15 sought or offered to prove or disprove a claim or
16 complaint of professional misconduct or malpractice filed
17 against a mediation party, nonparty participant, or
18 representative of a party based on conduct occurring
19 during a mediation; or

20 (7) sought or offered to prove or disprove abuse,
21 neglect, abandonment, or exploitation in a proceeding in
22 which a child or adult protective services agency is a
23 party, unless the case is referred by a court to
24 mediation and a public agency participates.

25 (b) There is no privilege under Section 4 if a court,
26 administrative agency, or arbitrator finds, after a hearing
27 in camera, that the party seeking discovery or the proponent
28 of the evidence has shown that the evidence is not otherwise
29 available, that there is a need for the evidence that
30 substantially outweighs the interest in protecting
31 confidentiality, and that the mediation communication is
32 sought or offered in:

33 (1) a court proceeding involving a felony; or

34 (2) except as otherwise provided in subsection (c),

1 a proceeding to prove a claim to rescind or reform or a
2 defense to avoid liability on a contract arising out of
3 the mediation.

4 (c) A mediator may not be compelled to provide evidence
5 of a mediation communication referred to in subsection (a)(6)
6 or (b)(2).

7 (d) If a mediation communication is not privileged under
8 subsection (a) or (b), only the portion of the communication
9 necessary for the application of the exception from
10 nondisclosure may be admitted. Admission of evidence under
11 subsection (a) or (b) does not render the evidence, or any
12 other mediation communication, discoverable or admissible for
13 any other purpose.

14 Section 7. Prohibited mediator reports.

15 (a) Except as required in subsection (b), a mediator may
16 not make a report, assessment, evaluation, recommendation,
17 finding, or other communication regarding a mediation to a
18 court, administrative agency, or other authority that may
19 make a ruling on the dispute that is the subject of the
20 mediation.

21 (b) A mediator may disclose:

22 (1) whether the mediation occurred or has
23 terminated, whether a settlement was reached, and
24 attendance;

25 (2) a mediation communication as permitted under
26 Section 6; or

27 (3) a mediation communication evidencing abuse,
28 neglect, abandonment, or exploitation of an individual to
29 a public agency responsible for protecting individuals
30 against such mistreatment.

31 (c) A communication made in violation of subsection (a)
32 may not be considered by a court, administrative agency, or
33 arbitrator.

1 Section 8. Confidentiality. Unless subject to the Open
2 Meetings Act or the Freedom of Information Act, mediation
3 communications are confidential to the extent agreed by the
4 parties or provided by other law or rule of this State.

5 Section 9. Mediator's disclosure of conflicts of
6 interest; background.

7 (a) Before accepting a mediation, an individual who is
8 requested to serve as a mediator shall:

9 (1) make an inquiry that is reasonable under the
10 circumstances to determine whether there are any known
11 facts that a reasonable individual would consider likely
12 to affect the impartiality of the mediator, including a
13 financial or personal interest in the outcome of the
14 mediation and an existing or past relationship with a
15 mediation party or foreseeable participant in the
16 mediation; and

17 (2) disclose any such known fact to the mediation
18 parties as soon as is practical before accepting a
19 mediation.

20 (b) If a mediator learns any fact described in
21 subsection (a)(1) after accepting a mediation, the mediator
22 shall disclose it as soon as is practicable.

23 (c) At the request of a mediation party, an individual
24 who is requested to serve as a mediator shall disclose the
25 mediator's qualifications to mediate a dispute.

26 (d) A person that violates subsection (a), (b), or (g)
27 is precluded by the violation from asserting a privilege
28 under Section 4.

29 (e) Subsections (a), (b), (c), and (g) do not apply to
30 an individual acting as a judge.

31 (f) This Act does not require that a mediator have a
32 special qualification by background or profession.

33 (g) A mediator must be impartial, unless after

1 disclosure of the facts required in subsections (a) and (b)
2 to be disclosed, the parties agree otherwise.

3 Section 10. Participation in mediation. An attorney or
4 other individual designated by a party may accompany the
5 party to and participate in a mediation. A waiver of
6 participation given before the mediation may be rescinded.

7 Section 11. Relation to Electronic Signatures in Global
8 and National Commerce Act. This Act modifies, limits, or
9 supersedes the federal Electronic Signatures in Global and
10 National Commerce Act, 15 U.S.C. Section 7001 et seq., but
11 this Act does not modify, limit, or supersede Section 101(c)
12 of that Act or authorize electronic delivery of any of the
13 notices described in Section 103(b) of that Act.

14 Section 12. Uniformity of application and construction.
15 In applying and construing this Act, consideration must be
16 given to the need to promote uniformity of the law with
17 respect to its subject matter among states that enact it.

18 Section 13. Severability clause. If any provision of this
19 Act or its application to any person or circumstance is held
20 invalid, the invalidity does not affect other provisions or
21 applications of this Act which can be given effect without
22 the invalid provision or application, and to this end the
23 provisions of this Act are severable.

24 Section 16. Application to existing agreements or
25 referrals.

26 (a) This Act governs a mediation pursuant to a referral
27 or an agreement to mediate made on or after January 1, 2004.

28 (b) On or after January 1, 2004, this Act governs an
29 agreement to mediate whenever made.

1 Section 90. The Condominium Property Act is amended by
2 changing Section 32 as follows:

3 (765 ILCS 605/32)

4 Sec. 32. Alternate dispute resolution; mediation;
5 arbitration.

6 (a) The declaration or bylaws of a condominium
7 association may require mediation or arbitration of disputes
8 in which the matter in controversy has either no specific
9 monetary value or a value of \$10,000 or less, other than the
10 levying and collection of assessments, or that arises out of
11 violations of the declaration, bylaws, or rules and
12 regulations of the condominium association. A dispute not
13 required to be mediated or arbitrated by an association
14 pursuant to its powers under this Section, that is submitted
15 to mediation or arbitration by the agreement of the
16 disputants, is also subject to this Section.

17 (b) The Illinois Uniform Arbitration Act shall govern
18 all arbitrations proceeding under this Section.

19 (b-5) The Uniform Mediation Act shall govern all
20 mediations proceeding under this Section.

21 (c) The association may require the disputants to bear
22 the costs of mediation or arbitration.

23 (Source: P.A. 89-41, eff. 6-23-95.)

24 Section 99. Effective date. This Act takes effect January
25 1, 2004.