

CHAPTER 53
FORMERLY
SENATE BILL NO. 63

AN ACT TO AMEND TITLE 25 AND TITLE 29 OF THE DELAWARE CODE RELATING TO
MANUFACTURED HOUSING.

BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF DELAWARE:

Section 1. Amend § 7001A, Title 25 of the Delaware Code by making deletions as shown by strike through and insertions as shown by underline as follows:

~~§ 7001A. The Delaware Manufactured Housing Alternative Dispute Resolution Act.~~

~~(a) The purpose of the Delaware Manufactured Housing Alternative Dispute Resolution (ADR) Act is to provide a means to resolve disputes without litigation by using alternative dispute resolution techniques. The act requires the use of alternative dispute resolution by the parties if the Governor's Advisory Council on Manufactured Housing, by the affirmative vote of a majority of its members, determines that an existing dispute or perceived grievance between a manufactured home community owner and a tenant or a group of tenants should be referred to ADR. A broad interpretation of the provisions of this section should achieve these purposes.~~

~~(b) As used in this section, unless the context otherwise requires:~~

~~(1) "ADR" means the alternative dispute resolution method provided for by this section, unless the parties to a dispute adopt by written agreement some other method of ADR, in which event "ADR" refers to the method they adopt. The "ADR" method provided for by this section is mandatory, but nonbinding mediation.~~

~~(2) "ADR specialist" means an individual who has the qualifications described in subsection (g) of this section to conduct an ADR proceeding.~~

~~(3) "Advisory Council" means the Governor's Advisory Council on Manufactured Housing.~~

~~(4) A "dispute subject to ADR" means a dispute that is not the basis for a pending action for summary possession in accordance with § 5702 of this title.~~

~~(5) "Mediation" is an option by which an ADR specialist facilitates the parties in reaching a mutually acceptable resolution of a dispute. It includes all contacts between the ADR specialist and any party or parties until a resolution is agreed to, the parties discharge the ADR specialist, or the ADR specialist finds that the parties cannot agree.~~

~~(6) "Person" means any individual, corporation, association, partnership, statutory trust, business trust, limited liability company, or any other legal, commercial, or governmental entity, whether or not organized for profit.~~

~~(c) A person who files a certificate of agreement provided for in subsection (d) of this section agrees to submit all disputes subject to ADR to an ADR specialist. Upon the filing of a certificate of agreement, the filer is bound by the provisions of this section.~~

~~(d)(1) A certificate of agreement to submit a dispute to ADR must set forth:~~

~~a. The name of the person filing the certificate;~~

~~b. The address of the person filing the certificate, including the street, number, city, state, and zip code, which will be used to give any required notice in a dispute;~~

~~c. The name of the person or persons or entity subject to the dispute; and~~

~~d. The nature and substance of the dispute in sufficient detail to permit understanding of the circumstances and issues involved in the dispute.~~

~~(2) A provision in a certificate of agreement that purports to limit a dispute that is subject to ADR, other than an action for summary possession, is void.~~

~~(e)(1) A certificate of agreement accepting ADR must be filed with the Chair of the Advisory Council, or the Chair's designee.~~

~~(2) The Chair shall keep records as are required to determine who has filed a certificate of agreement accepting ADR or when such a certificate has been revoked, together with the date of any such filing or revocation.~~

~~(3) The Chair shall keep appropriate records regarding all disputes which have been referred to ADR by the action of the members of the Advisory Council.~~

~~(4) A certificate of agreement accepting ADR or revoking ADR must be accompanied by a payment of \$30 to the Governor's Advisory Council. The payment amount may be changed by a two-thirds affirmative vote of the members of the Advisory Council. The payment will be refunded if the Advisory Council does not submit the dispute to ADR.~~

~~(f)(1) If the Advisory Council determines that an existing dispute or perceived grievance between a manufactured home community owner and a tenant or a group of tenants should be referred to ADR, ADR is mandatory, but nonbinding. A manufactured home community owner or a tenant or a group of tenants who are the respondents in a dispute for which a certificate of agreement has been filed with the Advisory Council, shall submit to the ADR.~~

~~(2) An affirmative vote by a majority of the members of the Advisory Council is sufficient to submit a dispute between a manufactured housing community owner and a tenant or a group of tenants to ADR.~~

~~(g) ADR proceedings must be conducted by a person who meets the following criteria:~~

~~(1) The person has successfully completed at least 25 hours of training in resolving civil disputes in a course or program approved by the Delaware State Bar Association, or~~

~~(2) The person is registered as an active member of the Delaware Bar, together with a minimum of 5 years of experience as a practicing attorney; and~~

~~(3) The person agrees to conduct ADR proceedings without compensation.~~

~~(h) The ADR mediation conference. — A mediation conference must be scheduled in consultation with the parties within 30 days of the date of the determination by the Advisory Council that the dispute shall be referred to ADR, and must be held by the selected ADR specialist within ninety days after scheduling. All parties must participate in the mediation conference. The ADR specialist may immediately terminate the ADR conference and recommend that the Advisory Council refer the dispute to the Attorney General's office for further investigation, for failure to participate in the mediation conference. All persons necessary for the resolution of the case must be present at the mediation conference.~~

~~(1) Before a mediation conference begins, the ADR specialist shall provide the parties with a written statement setting forth the procedure to be followed. The parties are each required to serve upon the ADR specialist a Confidential Mediation Conference Statement 10 days prior to the scheduled mediation conference.~~

~~(2) Prior to the commencement of the mediation conference, the parties and the ADR specialist shall sign a written agreement which must include explanation of the following:~~

~~a. The rights and obligations of parties to the mediation conference; and~~

~~b. The confidentiality of the mediation conference.~~

~~(3) All memoranda, documents, work products, and other materials contained in the case files of an ADR specialist or a court related to the mediation are confidential. Any communication made in, or in connection with, the mediation which relates to the dispute being mediated, whether made to the ADR specialist or a party or to any person, if made at a mediation conference, is confidential. The certificate of agreement is~~

~~confidential unless the parties otherwise agree in writing. Confidential materials and communications are not subject to disclosure in any judicial or administrative proceeding except:~~

~~a. If all parties to the mediation agree in writing to waive confidentiality;~~

~~b. In an action between an ADR specialist and a party to the mediation for damages arising out of the mediation; or~~

~~c. Statements, documents, memoranda, materials, and other tangible evidence, otherwise subject to discovery, which were not prepared specifically for use in, and were not used in, the mediation conference.~~

~~(4) The ADR specialist shall assist the parties to reach a mutually acceptable resolution of their dispute through discussion and negotiation. The ADR specialist may terminate the mediation conference if the parties are unable to reach agreement. Such a termination is without prejudice to either party in any other proceeding. The ADR specialist may not impose any adjudication, sanction, or penalty upon the parties based solely on their failure to reach an agreement; however, the ADR specialist may impose sanctions upon a party who fails to appear for a mediation conference or fails to negotiate in good faith. A party is not bound by anything said or done at the mediation conference, except by a settlement agreement, if a settlement is reached.~~

~~(5) If the parties involved in a mediation conference reach a settlement, the agreement must be reduced to writing by the ADR specialist, unless the parties otherwise agree as part of their settlement that they will prepare the writing. The written agreement must be signed by the parties and the ADR specialist. The ADR specialist shall encourage unrepresented parties to the mediation to consult with counsel prior to executing a mediation agreement. The ADR specialist shall provide all parties with a list of agencies that may be able to assist an unrepresented party, such as the Consumer Protection Unit of the Attorney General's Office; Delaware Volunteer Legal Services, Inc. (DVLS); Community Legal Aid Society, Inc. (CLASI); and Legal Services Corporation of Delaware, Inc. (LSCD). A settlement agreement must set forth the settlement of the disputed issues and the future responsibilities of each party to the agreement. The agreement is binding on all parties to the agreement.~~

~~(6) If the parties involved in a mediation conference do not reach a settlement, the ADR specialist shall file with the Advisory Council a notice and serve a copy to each of the parties, advising that mediation was not successful.~~

~~(i)(1) With the exception of subsection (1) (statute of limitations) of this section, the ADR procedures provided for in this section cease to have any force or effect upon the commencement of litigation concerning the dispute that is the subject of the ADR proceedings. The parties to such litigation are exclusively subject to the rules of the tribunal in which the litigation has been commenced and nothing in this section shall be construed to infringe upon or otherwise affect the jurisdiction of the courts over such disputes.~~

~~(2) The Council may make a recommendation to the Office of the Attorney General for further action if the ADR process is unsuccessful. The Office of the Attorney General shall report back to the Advisory Council within 60 days as to the action taken or to be taken with respect to the dispute.~~

~~(j) The results of the ADR proceedings must be reported to the Advisory Council. Memoranda and documents submitted to an ADR specialist, statements made during the ADR, and notes or other materials made by the ADR specialist or any party in connection with the ADR are not subject to discovery, may not be introduced into evidence in any proceeding, and may not be construed to be a waiver of any otherwise applicable privilege; however, nothing in this section limits the discovery or use as evidence of documents and other materials that would have otherwise been discoverable or admissible as evidence but for the use of those documents or materials in the ADR proceeding.~~

~~(k) An ADR specialist has the same immunity that the ADR specialist would have if that ADR specialist were a judge acting in a court with jurisdiction over the subject matter and over the parties involved in the dispute that led to ADR.~~

~~(l) The initiation of ADR under this section suspends the running of the statute of limitations applicable to the dispute that is the subject of the ADR until 14 days after the ADR specialist files notice that mediation was not successful, pursuant to paragraph (h)(6) of this section.~~

Section 2. Amend § 2519, Title 29 of the Delaware Code by making deletions as shown by strike through and insertions as shown by underline as follows:

~~§ 2519. Consumer protection advisory councils.~~

~~Council on Manufactured Housing.—~~

~~(1) The Council on Manufactured Housing shall advise the Division on matters relating to mobile home owners and tenants, manufactured housing and mobile home parks. The Council may consider matters referred to it by the Division, and may, on its own motion, consider any issue or matter within its field of expertise. The Council shall report directly and exclusively to the Division. All funding for the Council shall be determined by the Division.~~

~~(2) The Council on Manufactured Housing shall be composed of 14 members, 12 of whom shall be appointed by the Governor: Six members representing the manufactured housing industry; and 6 members representing persons who live in mobile home parks, both those who own the mobile homes in which they reside and those who do not own the mobile homes in which they reside (at least 1 from each county). In the event a member ceases to be an owner or employee of a mobile home park, or a resident of a mobile home park, such person's membership shall cease upon the occurrence of such event. In addition to the 12 voting members appointed by the Governor, a representative of the Division appointed by the Director, and a representative of the Department of Justice, appointed by the Attorney General, shall serve as nonvoting ex officio members.~~

~~(3) Each member shall serve for a term for 2 years, and may successively serve for 1 additional term; provided, however, that where a member was initially appointed to fill a vacancy, such member shall successively serve for only 1 additional full term. Any person appointed to fill a vacancy on the Council shall hold office for the remainder of the unexpired term of the former member.~~

~~(4) Members of the Council shall serve without compensation except that they may be reimbursed for reasonable and necessary expenses incident to their duties as members of the Council. A Chairperson of the Council shall be chosen by members of the Council from among its members, shall serve in that capacity for a term of 1 year, and shall be eligible for reelection.~~

Approved June 26, 2015