

**COMMUNITY ASSOCIATIONS INSTITUTE
CENTRAL INDIANA CHAPTER
LEGISLATIVE ACTION COMMITTEE**

HOUSE ENROLLED ACT 1286 (HEA 1286)

GRIEVANCE RESOLUTION MANDATE

HEA 1286 will appear as: **IC 32-25-8.5 (Condominium Associations)**
IC 32-25.5-5 (Homeowners Associations)

Effective date: **July 1, 2015**

BACKGROUND INFORMATION

Purpose: These laws were adopted to create a method for both owners and Associations to try and resolve claims and disputes before heading to court and incurring the expenses of a lawsuit

These laws apply to:

1. Any claim or dispute regarding the interpretation, application, or enforcement of the governing documents;
2. Any claim regarding the rights or duties of the Association or the Board of Directors under the governing documents;
3. Any claim relating to the maintenance of the subdivision; or
4. Any other type of claim or dispute among the parties which involves the subdivision or the Association.

These laws do NOT apply to the following "exempt claims":

1. Any claim or action by the Association for unpaid dues and assessments;
2. An action by any party to obtain a temporary restraining order or other emergency relief. a) to maintain the status quo and protect the party's ability to enforce the governing documents; and b) when an emergency condition exists that jeopardizes the health or safety of any residents within the subdivision;
3. A lawsuit regarding a claim or action that cannot be completed under the notice terms of this statute before the statute of limitations would expire (unless all parties agree to toll, or suspend, the statute of limitations in order to complete the grievance procedures in this statute);
4. A dispute that is required by law, contract, warranty agreement, or other instrument to go through mediation, arbitration, or other form of alternate dispute resolution before a lawsuit is filed;
5. A claim that is substantively identical to a) a previously addressed claim between the parties; or b) a claim that has already been resolved in court in favor of one of the parties.

The term "legal proceedings" means any court action (i.e. lawsuit) or any administrative action authorized by law (i.e. Attorney General investigation, Discrimination claim, Employment claim, etc.)

The term "claimant" means any owner, the Association, or the Board that has a claim or dispute against another party. The term "respondent" means the party against whom a claim or dispute is made.

The governing documents of the Association must include grievance resolution procedures that apply to all members of the Association and to the Board of Directors.

THE PROCEDURE

This new law prohibits any legal action (except for exempt claims) regarding a claim or dispute between the parties until the grievance procedures in this statute have been completed.

To begin a claim

The claimant (i.e. the Association) must provide a "notice of the claim" to the respondent (i.e. the violator) that includes the following information:

1. The nature of the claim, or violation, including the date, time, location, persons involved, and the violator's role in the claim, or violation;
2. The basis, or reason, for the claim or dispute, including the provision(s) of the governing documents or other authority (i.e. law, etc.) from which the claim, or violation, arises;
3. What the Association wants the violator to do (or not do) to correct or resolve the claimed violation;
4. Notifies the violator that he/she has a right to meet with the Board of Directors face-to-face to discuss the claim or violation if the violator requests such a meeting in writing within ten (10) business days from the date the notice of the claim, or violation, was given to the violator;
5. Notifies the violator of the name and address of the person from whom a meeting request under #4 above must be made.

The face-to-face meeting

If the violator requests a face-to-face meeting with the Board of Directors in writing within ten (10) business days after the date the notice of the claim, or violation, was given to the violator:

- The Board of Directors and the violator must meet in person at a mutually agreed to time and place to try and resolve the claim or violation by good faith negotiation.
- During this meeting, the parties must have full access to any property, if any, that is part of the claim or violation for inspection, if appropriate or necessary.
- If the violator agrees to take corrective action, the Association must provide the violator and his agent's full access to the property to make the corrective action (this appears to be more for condominiums).

Impasse

An impasse (i.e. deadlock) exists when:

1. The violator doesn't request a face-to-face meeting with the Association;
2. Either party fails to show up for a properly requested face-to-face meeting;
3. The parties cannot agree to settle the claim or dispute at a properly held in-person meeting.

If the parties are at an impasse:

- Either party may within ten (10) days of reaching impasse request in writing to the other party that the claim or dispute be submitted to mediation or binding arbitration.
- The party requesting the mediation or arbitration will be fully responsible for the costs of the mediator or arbitrator.

If the parties are at an impasse and:

- Neither party requests mediation or arbitration; or
- IN Mediation or arbitration does not settle the claim or dispute; NOW either party may file a lawsuit or administrative action!

Mediation or Arbitration

If the claim or dispute is settled through negotiation (i.e. the face-to-face meeting), mediation or arbitration:

- The settlement of the claim or dispute must be documented in a written agreement signed by each party.

- If either party fails to abide by the terms of the signed settlement agreement

The other party may now file a lawsuit or administrative action to enforce the settlement agreement!

- If the other party files a lawsuit or administrative action and prevails (i.e. wins), then the party is entitled to recover from the other party (i.e. the losing party!):

- 1) Court costs;

- 2) Attorney fees; and

- 3) All other reasonable costs incurred in enforcing the settlement agreement.

Release and Discharge

The release or discharge of a violator from liability to the Association on one claim does NOT release or discharge the violator from potential claims that may be brought by another person who is not party to that claim or dispute.

Board Authority to Negotiate Settlements

The Board of Directors of the Association may do any of the following without the consent of the members of the Association:

- 1) Negotiate settlements of claims, violation, disputes, or legal proceedings; and

- 2) Execute settlement agreements, waivers, releases of claims, or any other document resulting from proceedings under this law.

Attorney Fees

Except for a party's request to mediate or arbitrate a claim or dispute, each party to a claim or dispute shall bear its own costs for the application of this law, including attorney fees.

How does this Grievance Resolution law impact the Association and Manager?

1. Violation notices and procedures will have to change (can no longer be generic, must cite covenant);
2. The timeline for enforcement will change (extended or shortened, depending on approach);
3. Cost of enforcement may actually increase (which could defeat the purpose of the law!), so Associations should budget better for enforcement;
4. Boards *must* be involved in enforcement process...can no longer avoid a face-to-face exchange with a violator;
5. Associations and Managers will have to do a better job of documenting details of a violation, such as: date, time, location, photos, etc.;
6. If requested, an Association can be forced into binding arbitration;

There are 2 main options for an Association to comply with this Grievance Resolution process:

OPTION #1

The Association or management company provides Notice of Claim to violator before turning the matter over to the attorney for litigation.

Once turned over to the attorney, the attorney can then start seeking reimbursement for his work (assuming the governing documents allow this).

OPTION #2

The Association or management company continues to send their usual violation notices.

When the matter is turned over to the attorney, the attorney will then be required to send the Notice of Claim and make sure the Grievance Resolution process is properly followed before filing a lawsuit.

If this procedure is used, the Association cannot seek reimbursement for the legal fees incurred to comply with the Grievance Resolution requirements.