S T A T E O F N E W Y O R K

3147

2009-2010 Regular Sessions

I N A S S E M B L Y

January 23, 2009

Introduced by M. of A. THIELE -- read once and referred to the Committee on Judiciary

AN ACT to amend the real property actions and proceedings law, in relation to establishing the land use mediation program; and the judiciary law, in relation to the court alternative dispute resolution service

THE PEOPLE OF THE STATE OF NEW YORK, REPRESENTED IN SENATE AND ASSEMBLY, DO ENACT AS FOLLOWS:

Section 1. Article 21 of the real property actions and proceedings law is renumbered article 22, sections 2101 and 2111 are renumbered 2201 and 2211 and a new article 21 is added to read as follows:

ARTICLE 21
LAND USE MEDIATION PROGRAM

SECTION 2101. PROGRAM ESTABLISHED.
2102. PROVISION OF MEDIATION SERVICES; FORMS, FILING AND FEES.
2103. APPLICATION; ELIGIBILITY.
2104. SUBMISSION OF APPLICATION FOR MEDIATION.
2105. STAY OF FILING PERIOD.
2106. PURPOSE; CONDUCT OF MEDIATION.
2107. SCHEDULE; NOTICE; PARTICIPANTS.
2108. PARTIES TO MEDIATION.
2109. SHARING OF COSTS.
2110. ADMISSIBILITY.
2111. AGREEMENTS.
2112. MEDIATOR'S REPORT.

S 2101. PROGRAM ESTABLISHED. THE LAND USE MEDIATION PROGRAM IS ESTABLISHED TO PROVIDE ELIGIBLE PRIVATE LANDOWNERS WITH A PROMPT, INDEPENDENT, INEXPENSIVE AND LOCAL FORUM FOR MEDIATION OF GOVERNMENTAL LAND USE ACTIONS AS AN ALTERNATIVE TO COURT ACTION.

EXPLANATION--Matter in ITALICS (underscored) is new; matter in brackets [ ] is old law to be omitted.

LBD05117-02-9

S 2102. PROVISION OF MEDIATION SERVICES; FORMS, FILING AND FEES. THE COURT ALTERNATIVE DISPUTE RESOLUTION SERVICE CREATED IN SECTION 39-C OF THE JUDICIARY LAW SHALL PROVIDE MEDIATION SERVICES UNDER THIS ARTICLE. THE COURT ALTERNATIVE DISPUTE RESOLUTION SERVICE SHALL:

A. ASSIGN MEDIATORS UNDER THIS ARTICLE WHO ARE KNOWLEDGEABLE IN LAND USE REGULATORY ISSUES AND ENVIRONMENTAL LAW;

B. ESTABLISH A SIMPLE AND EXPEDIENT APPLICATION PROCESS. NOT LATER THAN FEBRUARY FIRST OF EACH YEAR, THE COURT ALTERNATIVE DISPUTE RESOLUTION SERVICE SHALL SEND TO THE SECRETARY OF STATE A COPY OF EACH COMPLETED APPLICATION RECEIVED AND EACH AGREEMENT SIGNED DURING THE PREVIOUS CALENDAR YEAR; AND

C. ESTABLISH A FEE FOR SERVICES IN AN AMOUNT NOT TO EXCEED ONE HUNDRED SEVENTY-FIVE DOLLARS FOR EVERY FOUR HOURS OF MEDIATION SERVICES PROVIDED. IN ADDITION, THE LANDOWNER IS RESPONSIBLE FOR THE COSTS OF PROVIDING NOTICE AS REQUIRED UNDER SECTION 2107 OF THIS ARTICLE.

S 2103. APPLICATION; ELIGIBILITY. A LANDOWNER MAY APPLY FOR MEDIATION UNDER THIS ARTICLE IF THAT LANDOWNER:

A. HAS SUFFERED SIGNIFICANT HARM AS A RESULT OF A GOVERNMENTAL ACTION REGULATING LAND USE;

B. APPLIES FOR MEDIATION UNDER SECTION 2104 OF THIS ARTICLE WITHIN THE TIME ALLOWED UNDER LAW OR RULES OF THE COURT FOR FILING FOR JUDICIAL REVIEW OF THAT GOVERNMENTAL ACTION;

C. HAS:

(1) FOR MEDIATION OF MUNICIPAL GOVERNMENTAL LAND USE ACTION, SOUGHT AND FAILED TO OBTAIN A PERMIT, VARIANCE OR SPECIAL EXCEPTION AND HAS PURSUED ALL REASONABLE AVENUES OF ADMINISTRATIVE APPEAL; OR

(2) FOR MEDIATION OF STATE GOVERNMENTAL LAND USE ACTION, SOUGHT AND FAILED TO OBTAIN GOVERNMENTAL APPROVAL FOR A LAND USE OF THAT LANDOWNER'S LAND AND HAS A RIGHT TO JUDICIAL REVIEW EITHER DUE TO A FINAL AGENCY ACTION OR THE FAILURE OR REFUSAL OF AN AGENCY TO ACT; AND

D. SUBMITS TO THE SUPREME COURT CLERK ALL NECESSARY FEES AT THE TIME OF APPLICATION.

S 2104. SUBMISSION OF APPLICATION FOR MEDIATION. A LANDOWNER MAY APPLY FOR MEDIATION UNDER THIS ARTICLE BY FILING AN APPLICATION FOR MEDIATION WITH THE SUPREME COURT CLERK IN THE COUNTY IN WHICH THE LAND THAT IS THE SUBJECT OF THE CONFLICT IS LOCATED. THE SUPREME COURT CLERK SHALL FORWARD THE APPLICATION TO THE COURT MEDIATION SERVICE.

S 2105. STAY OF FILING PERIOD. NOTWITHSTANDING ANY OTHER PROVISION OF LAW, THE PERIOD OF TIME ALLOWED BY LAW OR BY RULES OF THE COURT FOR ANY PERSON TO FILE FOR JUDICIAL REVIEW OF THE GOVERNMENTAL ACTION FOR WHICH MEDIATION IS REQUESTED UNDER THIS ARTICLE IS STAYED FOR THIRTY DAYS BEYOND THE DATE THE MEDIATOR FILES THE REPORT REQUIRED UNDER SECTION 2112 OF THIS ARTICLE WITH THE SUPREME COURT CLERK, BUT IN NO CASE LONGER THAN ONE HUNDRED TWENTY DAYS FROM THE DATE THE LANDOWNER FILES THE APPLICATION FOR MEDIATION WITH THE SUPREME COURT CLERK.

S 2106. PURPOSE; CONDUCT OF MEDIATION. THE PURPOSE OF A MEDIATION UNDER THIS ARTICLE IS TO FACILITATE, WITHIN EXISTING LAND USE LAWS, ORDINANCES AND REGULATIONS, A MUTUALLY ACCEPTABLE SOLUTION TO A CONFLICT BETWEEN A LANDOWNER AND A GOVERNMENTAL ENTITY REGULATING LAND USE. THE MEDIATOR, WHENEVER POSSIBLE AND APPROPRIATE, SHALL CONDUCT THE MEDIATION IN THE COUNTY IN WHICH THE LAND THAT IS THE SUBJECT OF THE CONFLICT IS LOCATED. WHEN MEDIATING THAT SOLUTION, THE MEDIATOR SHALL BALANCE THE NEED FOR PUBLIC ACCESS TO PROCEEDINGS WITH THE FLEXIBILITY, DISCRETION AND PRIVATE CAUCUS TECHNIQUES REQUIRED FOR EFFECTIVE MEDIATION.

S 2107. SCHEDULE; NOTICE; PARTICIPANTS. THE MEDIATOR IS RESPONSIBLE FOR SCHEDULING ALL MEDIATION SESSIONS. THE MEDIATOR SHALL PROVIDE A LIST

OF THE NAMES AND ADDRESSES AND A COPY OF THE NOTICE OF THE MEDIATION SCHEDULE TO THE SUPREME COURT CLERK, WHO SHALL MAIL THE NOTICES. THE MEDIATOR SHALL INCLUDE ON THE LIST PERSONS IDENTIFIED IN THE FOLLOWING WAYS.

A. THE LANDOWNER AND THE GOVERNMENTAL ENTITY SHALL PROVIDE TO THE MEDIATOR THE NAMES AND ADDRESSES OF THE PARTIES, INTERVENORS AND OTHER PERSONS WHO SIGNIFICANTLY PARTICIPATED IN THE UNDERLYING GOVERNMENTAL LAND USE ACTION PROCEEDINGS.

B. ANY OTHER PERSON WHO BELIEVES THAT THAT PERSON'S PARTICIPATION IN THE MEDIATION IS NECESSARY MAY FILE A REQUEST WITH THE MEDIATOR TO BE INCLUDED IN THE MEDIATION.

C. THE MEDIATOR SHALL DETERMINE IF ANY OTHER PERSON'S PARTICIPATION IS NECESSARY FOR EFFECTIVE MEDIATION.

S 2108. PARTIES TO MEDIATION. A MEDIATOR SHALL INCLUDE IN THE MEDIATION PROCESS ANY PERSON THE MEDIATOR DETERMINES IS NECESSARY FOR EFFECTIVE MEDIATION, INCLUDING PERSONS REPRESENTING MUNICIPAL, COUNTY OR STATE AGENCIES AND ABUTTERS, PARTIES, INTERVENORS OR OTHER PERSONS SIGNIFICANTLY INVOLVED IN THE UNDERLYING GOVERNMENTAL LAND USE ACTION. A MEDIATOR MAY EXCLUDE OR LIMIT A PERSON'S PARTICIPATION IN MEDIATION WHEN THE MEDIATOR DETERMINES THAT EXCLUSION OR LIMITATION IS NECESSARY FOR EFFECTIVE MEDIATION. THIS SECTION DOES NOT REQUIRE A MUNICIPALITY TO PARTICIPATE IN MEDIATION UNDER THIS ARTICLE.

S 2109. SHARING OF COSTS. PARTICIPANTS IN THE MEDIATION MAY SHARE THE COST OF MEDIATION AFTER THE INITIAL FOUR HOURS OF MEDIATION SERVICES HAVE BEEN PROVIDED.

S 2110. ADMISSIBILITY. THE ADMISSIBILITY IN COURT OF CONDUCT OR STATEMENTS MADE DURING MEDIATION, INCLUDING OFFERS OF SETTLEMENT, IS GOVERNED BY THE LAWS OF THE STATE OF NEW YORK.

S 2111. AGREEMENTS. A MEDIATED AGREEMENT MUST BE IN WRITING. THE LANDOWNER, THE GOVERNMENTAL ENTITY AND ALL OTHER PARTICIPANTS WHO AGREE MUST SIGN THE AGREEMENT AS PARTICIPANTS AND THE MEDIATOR MUST SIGN AS THE MEDIATOR.

A. AN AGREEMENT THAT REQUIRES ANY ADDITIONAL GOVERNMENTAL ACTION IS NOT SELF-EXECUTING. IF ANY ADDITIONAL GOVERNMENTAL ACTION IS REQUIRED, THE LANDOWNER IS RESPONSIBLE FOR INITIATING THAT ACTION AND PROVIDING ANY ADDITIONAL INFORMATION REASONABLY REQUIRED BY THE GOVERNMENTAL ENTITY TO IMPLEMENT THE AGREEMENT. THE LANDOWNER MUST NOTIFY THE GOVERNMENTAL ENTITY IN WRITING WITHIN THIRTY DAYS AFTER THE MEDIATOR FILES THE MEDIATOR'S REPORT UNDER SECTION 2112 OF THIS ARTICLE, THAT THE LANDOWNER WILL BE TAKING ACTION IN ACCORDANCE WITH THE AGREEMENT.

B. NOTWITHSTANDING ANY PROCEDURAL RESTRICTION THAT WOULD OTHERWISE PREVENT RECONSIDERATION OF THE GOVERNMENTAL ACTION, A GOVERNMENTAL ENTITY MAY RECONSIDER ITS DECISION IN THE UNDERLYING GOVERNMENTAL LAND USE ACTION IN ACCORDANCE WITH THE AGREEMENT AS LONG AS THAT RECONSIDERATION DOES NOT VIOLATE ANY SUBSTANTIVE APPLICATION OR REVIEW REQUIREMENT.

S 2112. MEDIATOR'S REPORT. WITHIN NINETY DAYS AFTER THE LANDOWNER FILES AN APPLICATION FOR MEDIATION, THE MEDIATOR SHALL FILE A REPORT WITH THE SUPREME COURT CLERK. THE MEDIATOR SHALL FILE THE REPORT AS SOON AS POSSIBLE IF THE MEDIATOR DETERMINES THAT A MEDIATED AGREEMENT IS NOT POSSIBLE. THE REPORT MUST CONTAIN:

A. THE NAMES OF THE MEDIATION PARTICIPANTS, INCLUDING THE LANDOWNER, THE GOVERNMENTAL ENTITY AND ANY OTHER PERSONS;

B. THE NATURE OF ANY AGREEMENTS REACHED DURING THE COURSE OF MEDIATION, WHICH MEDIATION PARTICIPANTS WERE PARTIES TO THE AGREEMENTS AND WHAT FURTHER ACTION IS REQUIRED OF ANY PERSON;

C. THE NATURE OF ANY ISSUES REMAINING UNRESOLVED AND THE MEDIATION PARTICIPANTS INVOLVED IN THOSE UNRESOLVED ISSUES; AND

D. A COPY OF ANY WRITTEN AGREEMENT UNDER SECTION 2111 OF THIS ARTICLE.

S 2. The judiciary law is amended by adding a new section 39-c to read as follows:

S 39-C. COURT ALTERNATIVE DISPUTE RESOLUTION SERVICE. 1. COURT ALTERNATIVE DISPUTE RESOLUTION SERVICE. THERE IS ESTABLISHED WITHIN THE COURTS A COURT ALTERNATIVE DISPUTE RESOLUTION SERVICE TO PROVIDE ALTERNATIVE DISPUTE RESOLUTION, REFERRED TO IN THIS SECTION AS "ADR", SERVICES IN THE COURTS THROUGHOUT THE STATE.

2. ADR PROVIDERS. THE CHIEF ADMINISTRATOR OF THE COURTS SHALL CONTRACT FOR THE SERVICES OF QUALIFIED PERSONS OR ORGANIZATIONS TO SERVE AS PROVIDERS OF ADR SERVICES TO PARTIES. THE ADR PROVIDERS ARE NOT EMPLOYEES OF THE STATE FOR ANY PURPOSE. THE ADR PROVIDERS ARE ENTITLED TO BE PAID A REASONABLE PER DIEM FEE PLUS REIMBURSEMENT OF THEIR ACTUAL, NECESSARY AND REASONABLE EXPENSES INCURRED IN THE PERFORMANCE OF THEIR DUTIES, CONSISTENT WITH POLICIES ESTABLISHED BY THE CHIEF ADMINISTRATOR OF THE COURTS.

3. IMMUNITY FROM CIVIL LIABILITY. A PERSON SERVING AS AN ADR PROVIDER UNDER CONTRACT WITH THE CHIEF ADMINISTRATOR OF THE COURTS OR AS THE DIRECTOR OF THE COURT ALTERNATIVE DISPUTE RESOLUTION SERVICE IS IMMUNE FROM ANY CIVIL LIABILITY, AS ARE EMPLOYEES OF GOVERNMENTAL ENTITIES, FOR ACTS PERFORMED WITHIN THE SCOPE OF THE PROVIDER'S OR THE DIRECTOR'S DUTIES.

4. STAFF. WITH THE ADVICE AND APPROVAL OF THE COURT ALTERNATIVE DISPUTE RESOLUTION SERVICE COMMITTEE, THE CHIEF ADMINISTRATOR OF THE COURTS SHALL EMPLOY OR CONTRACT WITH A PERSON TO SERVE AS THE DIRECTOR OF THE COURT ALTERNATIVE DISPUTE RESOLUTION SERVICE. THE CHIEF ADMINISTRATOR OF THE COURTS SHALL PROVIDE OTHER NECESSARY STAFF AND CLERICAL ASSISTANCE TO THE COURT ALTERNATIVE DISPUTE RESOLUTION SERVICE, WITHIN THE LIMITS OF FUNDS AVAILABLE.

5. FACILITIES. THE CHIEF ADMINISTRATOR OF THE COURTS SHALL PROVIDE A PRINCIPAL OFFICE FOR THE COURT ALTERNATIVE DISPUTE RESOLUTION SERVICE AND SHALL ARRANGE FOR FACILITIES THROUGHOUT THE STATE AS NECESSARY AND ADEQUATE FOR THE CONDUCT OF ADR SESSIONS, WITHIN THE LIMITS OF FUNDS AVAILABLE.

6. COURT ALTERNATIVE DISPUTE RESOLUTION SERVICE COMMITTEE. THE COURT ALTERNATIVE DISPUTE RESOLUTION SERVICE COMMITTEE, OR "COMMITTEE", IS ESTABLISHED TO SET POLICY FOR AND MONITOR THE COURT ALTERNATIVE DISPUTE RESOLUTION SERVICE. THE COMMITTEE CONSISTS OF:

A. THE CHIEF JUSTICE OF THE COURT OF APPEALS OR A DESIGNEE;

B. THE CHIEF ADMINISTRATOR OF THE COURTS OR A DESIGNEE;

C. A JUSTICE OF THE SUPREME COURT, WHO IS APPOINTED BY AND SERVES AT THE PLEASURE OF THE CHIEF JUSTICE OF THE COURT OF APPEALS;

D. A JUDGE OF THE DISTRICT COURT, WHO IS APPOINTED BY AND SERVES AT THE PLEASURE OF THE CHIEF JUSTICE OF THE COURT OF APPEALS; AND

E. ANY ADDITIONAL MEMBERS APPOINTED BY THE CHIEF JUSTICE OF THE COURT OF APPEALS THAT THE CHIEF JUSTICE CONSIDERS NECESSARY TO THE COMMITTEE'S OPERATION.

7. FEES. WHEN A COURT REFERS PARTIES TO THE COURT ALTERNATIVE DISPUTE RESOLUTION SERVICE, THE COURT SHALL ASSESS THE PARTIES A FEE TO BE APPORTIONED EQUALLY AMONG THE PARTIES, UNLESS THE COURT OTHERWISE DIRECTS. THE FEE MUST BE DEPOSITED IN THE DEDICATED ACCOUNT CREATED IN SUBPARAGRAPH EIGHT.

A PARTY MAY FILE AN IN FORMA PAUPERIS APPLICATION FOR WAIVER OF FEE. IF THE COURT FINDS THAT THE PARTY DOES NOT HAVE SUFFICIENT FUNDS TO PAY THE FEE, IT SHALL ORDER THE FEE WAIVED.

8. COURT ALTERNATIVE DISPUTE RESOLUTION SERVICE FUND. THE COURT ALTERNATIVE DISPUTE RESOLUTION SERVICE FUND IS ESTABLISHED AS A NONLAPSING, DEDICATED FUND WITHIN THE OFFICE OF THE CHIEF ADMINISTRATOR. FEES COLLECTED FOR ADR SERVICES PROVIDED PURSUANT TO THIS SECTION MUST BE DEPOSITED IN THE FUND.

EXCEPT AS OTHERWISE PROVIDED IN THIS SECTION, THE ADMINISTRATIVE OFFICE OF THE COURTS SHALL USE ONE HUNDRED PERCENT OF THE RESOURCES IN THE FUNDS FROM NONDESIGNATED CASES TO COVER THE COSTS OF PROVIDING ADR SERVICES AS REQUIRED UNDER THIS SECTION. ALL FUNDS FROM CASES HANDLED BY THE COURT ALTERNATIVE DISPUTE RESOLUTION SERVICE MUST BE USED FOR THE COSTS OF PROVIDING ADR SERVICES AS REQUIRED UNDER THIS SECTION.

9. RULES. THE COURT OF APPEALS SHALL ADOPT RULES TO GOVERN THE REFERRAL OF CASES TO THE COURT ALTERNATIVE DISPUTE RESOLUTION SERVICE.

10. LAND USE MEDIATION. THE LAND USE MEDIATION PROGRAM IS A PROGRAM WITHIN THE COURT ALTERNATIVE DISPUTE RESOLUTION SERVICE.

A. THE DIRECTOR OF THE COURT ALTERNATIVE DISPUTE RESOLUTION SERVICE SHALL ADMINISTER THE LAND USE MEDIATION PROGRAM.

B. A LAND USE MEDIATION FUND IS ESTABLISHED AS A NONLAPSING, DEDICATED FUND WITHIN THE OFFICE OF THE CHIEF ADMINISTRATOR OF THE COURTS. FEES COLLECTED FOR MEDIATION SERVICES MUST BE DEPOSITED IN THE FUND. THE CHIEF ADMINISTRATOR OF THE COURTS SHALL USE THE RESOURCES IN THE FUND TO COVER THE COSTS OF PROVIDING MEDIATION SERVICES.

S 3. This act shall take effect on the first of January next succeeding the date on which it shall have become a law.