

# Md. COURTS AND JUDICIAL PROCEEDINGS

## Maryland Mediation and Confidentiality Act

### Code Ann. § 3-1801 (2012)

#### § 3-1801. Definitions

(a) In general. -- In this subtitle the following words have the meanings indicated.

(b) Mediation. -- "Mediation" means a process in which parties work with one or more impartial mediators who assist the parties in reaching a voluntary agreement for the resolution of a dispute or issues that are part of a dispute.

(c) Mediation communication. --

(1) "Mediation communication" means a communication, whether by speech, writing, or conduct, made as part of a mediation.

(2) "Mediation communication" includes a communication made for the purpose of considering, initiating, continuing, reconvening, or evaluating a mediation or a mediator.

(d) Mediator. -- "Mediator" means an individual who:

(1) Assists parties in reaching their own voluntary agreement for the resolution of a dispute; and

(2) Adheres to the Maryland Standard [sic] of Conduct for Mediators.

(e) Party. -- "Party" means a person that participates in a mediation and whose agreement is necessary to resolve the dispute.

**HISTORY:** 2012, ch. 309.

**NOTES:** EDITOR'S NOTE. --Section 2, ch. 309, Acts 2012, provides that the act shall take effect October 1, 2012.

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### **§ 3-1802. Applicability**

(a) In general. -- Except as provided in subsection (b) of this section, this subtitle applies to a mediation in which:

(1) The parties are required to mediate by law;

(2) The parties are referred to mediation by an administrative agency or arbitrator; or

(3) The mediator states in writing to any and all parties to the mediation and persons with whom the mediator has engaged in mediation communications that:

(i) The mediation communications will remain confidential in accordance with this subtitle; and

(ii) The mediator has read and, consistent with State law, will abide by the Maryland Standards of Conduct for Mediators during the mediation.

(b) Exceptions. -- This subtitle does not apply to a mediation:

(1) To which Title 17 of the Maryland Rules applies;

(2) Relating to the establishment, negotiation, administration, or termination of a collective bargaining relationship;

(3) Relating to a dispute that is pending under, or is part of the processes established by, a collective bargaining agreement unless the dispute has been filed with an administrative agency or court;

(4) Relating to an action to enforce an agreement to arbitrate under common law, the Federal Arbitration Act, the Maryland Uniform Arbitration Act under Subtitle 2 of this title, or the Maryland International Commercial Arbitration Act under Subtitle 2B of this title;

(5) Relating to an action to foreclose a lien against an owner-occupied residential property subject to foreclosure mediation conducted by the Office of Administrative Hearings under Maryland Rule 14-209.1;

(6) Arising from a referral of a matter to a master, examiner, auditor, or parenting coordinator under Maryland Rules 2-541, 2-542, 2-543, or 9-205.2; or

(7) Conducted by a judge who might make a ruling on a case based on the dispute.

(C) Agreement to exclude communications. – The parties and the mediator, by a written and signed agreement made in advance of the mediation, may agree to exclude all or part of the mediation communications from the application of this subtitle.

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### **§ 3-1803. Duties of mediator and participants**

(a) Mediator and participants requested by mediator. -- Except as provided in **§ 3-1804** of this subtitle, a mediator or any person present or otherwise participating in a mediation at the request of a mediator:

(1) Shall maintain the confidentiality of all mediation communications; and

(2) May not disclose or be compelled to disclose mediation communications in any judicial, administrative, or other proceeding.

(b) Parties or participants requested by parties. -- Except as provided in **§ 3-1804** of this subtitle:

(1) A party to a mediation and any person present or otherwise participating in the mediation at the request of a party may not disclose or be compelled to disclose mediation communications in any judicial, administrative, or other proceeding; and

(2) The parties may enter into a written agreement to maintain the confidentiality of all mediation communications and may require any person present or otherwise participating in the mediation at the request of a party to maintain the confidentiality of all mediation communications.

### **§ 3-1804. Requirements and exceptions**

(a) Written agreement of confidentiality required. -- A document signed by the parties that records points of agreement expressed by the parties or that constitutes an agreement reached by the parties as a result of mediation is not confidential unless the parties agree otherwise in writing.

(b) Disclosures allowed. -- In addition to any other disclosure required by law, a mediator, a party, or a person who was present or who otherwise participated in a mediation at the request of the mediator or a party may disclose mediation communications:

(1) To a potential victim or to the appropriate law enforcement authority to the extent that the mediator, party, or person reasonably believes the disclosure is necessary to prevent bodily harm or death to the potential victim;

(2) To the extent necessary to assert or defend against allegations of mediator misconduct or negligence;

(3) To the extent necessary to assert or defend against allegations of professional misconduct or malpractice by a party or any person who was present or who otherwise participated in the mediation at the request of a party, except that a mediator may not be compelled to participate in a proceeding arising out of the disclosure; or

(4) To the extent necessary to assert or defend against a claim or defense that, because of fraud, duress, or misrepresentation, a contract arising out of a mediation should be rescinded or damages should be awarded.

(c) Disclosure by court order; limitations. -- A court may order mediation communications to be disclosed only to the extent that the court determines that the disclosure is necessary to prevent an injustice or harm to the public interest that is of sufficient magnitude in the particular case to outweigh the integrity of mediation proceedings.

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### **§ 3-1805. When communications subject to discovery**

Mediation communications that are confidential under this subtitle are not subject to discovery, but information that is otherwise admissible or subject to discovery does not become inadmissible or protected from disclosure solely by reason of its use in mediation.

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### **§ 3-1806. Short title**

This subtitle may be cited as the Maryland Mediation Confidentiality Act.

**HISTORY:** [2012, ch. 309](#).

**NOTES:** EDITOR'S NOTE. --See note to § 3-1801 of this article.