

Guidelines and Procedures for Requesting Mediation

The following is a newly adopted regulation of the Regulations of Connecticut State Agencies and constitutes the guidelines and procedures of the Office of the Ombudsman for Property Rights:

Section 1. The Regulations of Connecticut State Agencies are amended by adding Sec. 48-52-1 to Sec. 48-52-6, inclusive, as follows:

Sec. 48-52-1 Definitions. As used in Sec. 48-52-1 to Sec. 48-52-6, inclusive, of the Regulations of Connecticut State Agencies:

(1) "Eminent Domain" means the legal process by which government takes private property and determines the amount of just compensation to be paid to the property owner.

(2) "Mediation" means the procedure of submitting disputes to the Ombudsman for Property Rights who shall assist the parties in reaching a settlement.

(3) "Property Owner" means all persons having a record interest in real property as defined in Sec. 8-125(6) of the Connecticut General Statutes and whose property is the subject of a governmental taking under any of the several provisions of Connecticut General Statutes as such statutes may be amended from time to time and/or any "displaced person" as defined in Sec. 8-267(3)(A) of the Connecticut General Statutes.

(4) "Public Agency" means a public agency as defined in Sec. 1-200 of the Connecticut General Statutes, with the power to acquire property through eminent domain and includes an entity authorized to acquire property through eminent domain on behalf of the public agency.

Sec. 48-52-2 Mediator.

- (a) The mediator shall be the Ombudsman for Property Rights or his/her designee. The mediator shall disclose to the parties and their counsel (1) any prior representation of or personal or business relationship with any of the parties or counsel and (2) any personal or professional interest that conflicts with his/her objectivity as an impartial mediator. In the event the mediator discloses such a relationship or interest, the parties shall execute a waiver of any claim of conflict of interest or the mediator shall recuse him/herself and the Ombudsman for Property Rights shall appoint an attorney licensed to practice law in Connecticut with general knowledge of real estate law and eminent domain procedures to act as mediator.
- (b) The goal of the mediator is to help the parties resolve their differences. The mediator shall review written materials and statements submitted by the parties in advance of any scheduled mediation session, listen to the parties, counsel with the parties and make recommendations to the parties concerning settlement.

Sec. 48-52-3 Obligations of the Parties.

- (a) Parties availing themselves of the mediation services of the Ombudsman for Property Rights shall have an obligation to each other and to the Ombudsman to negotiate in good faith. The mediator may, at any time, determine that the parties are not negotiating in good faith or that they have reached an impasse and further mediation is unlikely to produce a settlement or a significant narrowing of outstanding issues between the parties. In either of such events, the mediator shall notify the parties of the decision to terminate mediation, and if the mediation has come about by virtue of a motion in Superior Court to stay a related court action, then the mediator shall also notify the court.
- (b) By accepting mediation services of the Office of Ombudsman for Property Rights the parties agree not to call the mediator as a witness in any legal or adjudicative proceeding nor subpoena any notes or records made by the mediator during or with respect to the mediation.
- (c) The parties shall agree that all statements made during the mediation and all documents prepared for the mediation, except for copies of appraisals and those documents, maps, materials and other information in the possession of the agency and subject to disclosure to the public under Connecticut General Statutes, Chapter 14, Freedom of Information Act, shall remain confidential and not be disclosed outside of the mediation except (1) with the written consent of the parties and the mediator, or (2) when the disclosure is required by state or federal law or court order.
- (d) A request for mediation does not toll any statute of limitations or other time limit requirement for filing or processing a claim or preserving a right of appeal pursuant to Connecticut General Statutes and any regulations adopted thereunder. If a party requesting mediation or participating in mediation seeks a stay of proceedings pending before a court or before any public agency including Department of Economic and Community Development or Department of Transportation, then the party seeking the stay shall be solely responsible for making the request to stay proceedings with the court or the public agency.

Sec. 48-52-4 Request for Mediation.

A property owner or public agency may request mediation services of the Office of Ombudsman for Property Rights by submitting a written request to the Ombudsman for Property Rights, 450 Capitol Avenue, MS# 54PRO, Hartford, CT 06106-1379 with a copy to all parties. The request shall include:

- (1) If made by a representative of a public agency, copies of all appraisals produced by or for the public agency pertaining to the property and a written statement (A) identifying all record owners of the property, (B) representing that all record owners consent to the public agency's request for mediation, (C) stating

the reason for acquisition of the subject property, (D) reciting the statute(s) under which the acquisition is authorized, and (E) certifying to compliance with each of the criteria set forth in Sec. 48-52-5 of the Regulations of Connecticut State Agencies.

- (2) If made by the property owner, (A) identification of all record owners of the property, (B) the request shall be signed by all record owners or by their duly authorized legal representative(s), (C) the names, mailing addresses, phone and fax numbers of the property owners or their legal representatives, and (D) the name, address and phone number of the public agency;
- (3) Additional submissions of the public agency and the property owner:
(A) a brief statement of the positions including whether the matter is pending before any court or other mediator; (B) a full legal description of the subject property or a copy of the deed(s) or other documents establishing title to the property in which the property is described; and (C) copies of any letters or other written communications sent by the public agency to the property owner showing intent on the part of the public agency to acquire the property or a portion thereof or an interest therein and copies of the statement of compensation or notice of assessment and benefits or certificate of taking, if same have been filed or issued.

Sec. 48-52-5 Criteria for Acceptance or Rejection of a Request for Mediation.

The Ombudsman may accept or reject a request for mediation. In addition to compliance by the parties with Sec. 48-52-3 and Sec. 48-52-4, the criteria to be considered by the Ombudsman in determining whether to accept or reject a request to mediate are:

- (1) whether the dispute is the subject of an injunctive or other court proceeding, arbitration or another mediation process;
- (2) if the property owner is a displaced person, as defined above in Sec. 48-52-1, whether the property owner obtained a decision or requested reconsideration of the public agency's decision with respect to relocation assistance;
- (3) whether the property owner has been shown an appraisal of the subject property, and if the request is made by a representative of a public agency, whether the property owner has been shown all appraisals of the subject property produced by or for the agency;
- (4) whether the property owner has been provided a reasonable opportunity to review the agency's plans for the use of the subject property and the area, the minutes of meetings at which the taking of the subject property was discussed or voted upon and an opportunity to ask questions concerning the intended use, timing of the intended acquisition, relocation assistance or any other concern related to eminent domain procedures or relocation assistance;

- (5) whether the property owner has had a reasonable opportunity to discuss with the agency the amount of compensation offered and relocation expenses and reimbursements, to present facts and information pertaining to the subject property that the property owner believes is justification for payment of greater compensation than heretofore offered by the agency and whether the property owner received a reply from the agency including an explanation why no or less additional compensation has been offered or paid;
- (6) if the property owner is not represented by counsel, whether the public agency recommended in writing to the property owner that the property owner obtain counsel before agreeing in principle to any amount of compensation or signing any letter of intent, agreement, memorandum of agreement or other document that would bind the property owner to sell the property to the public agency;
- (7) whether and when the property owner was informed of services provided by the Ombudsman for Property Rights with regard to mediation, provided the name, address and telephone number of the Ombudsman for Property Rights and provided a written statement explaining that oral representations or promises made during the negotiation process are not binding on the public agency; and
- (8) any time limits that apply to completion of the mediation.

[Sec. 48-52-6 Notice to Courts, Department of Economic and Community Development, Department of Transportation and Other Public Agencies.](#)

Provided the parties have informed the mediator of a pending court or administrative proceeding, arbitration or other mediation at the time mediation is requested, the mediator shall notify the clerk of the court, Department of Economic and Community Development, Department of Transportation or other public agency before whom a matter or appeal is pending of acceptance of the request for mediation.