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## A BILL FOR AN ACT

RELATING TO CONDOMINIUMS.

**BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF HAWAII:**

1           SECTION 1. Section 514B-161, Hawaii Revised Statutes, is  
2 amended to read as follows:

3           " ~~[+]§514B-161[+]~~ **Mediation~~[-]~~; hearing.** (a) At the  
4 request of any party to a dispute concerning or involving one or  
5 more unit owners and an association, its board, managing agent,  
6 or one or more other unit owners relating to the interpretation,  
7 application, or enforcement of this chapter or the association's  
8 declaration, bylaws, or house rules, the parties to the dispute  
9 shall be required to participate in mediation. Each party shall  
10 be wholly responsible for its own costs of participating in  
11 mediation, unless both parties agree that one party shall pay  
12 all or a specified portion of the mediation costs. If a party  
13 refuses to participate in the mediation of a particular dispute,  
14 a court may take this refusal into consideration when awarding  
15 expenses, costs, and attorneys' fees.

16           (b) Nothing in subsection (a) shall be interpreted to  
17 mandate the mediation of any dispute involving:



- 1 (1) Actions seeking equitable relief involving threatened
- 2 property damage or the health or safety of association
- 3 members or any other person;
- 4 (2) Actions to collect assessments;
- 5 (3) Personal injury claims; or
- 6 (4) Actions against an association, a board, or one or
- 7 more directors, officers, agents, employees, or other
- 8 persons for amounts in excess of \$2,500 if insurance
- 9 coverage under a policy of insurance procured by the
- 10 association or its board would be unavailable for
- 11 defense or judgment because mediation was pursued.

12 (c) Written notification of the status of any request for  
13 mediation shall be provided by the mediator to all parties named  
14 in the mediation request within thirty days of receiving the  
15 request for mediation.

16 [+e+] (d) If any mediation under this section is not  
17 completed within two months from commencement, no further  
18 mediation shall be required unless agreed to by the parties.  
19 If, after all reasonable efforts for mediation have been made  
20 and the dispute is not settled in conference between the parties  
21 or through mediation, the mediator shall provide to all parties



1 a report on the status of the dispute no later than two months  
2 after commencement of mediation.

3 (e) If a dispute is not resolved by mediation as provided  
4 in subsection (a), in addition to any other legal remedies that  
5 may be available, any party that participated in the mediation  
6 may file a request for a hearing with the office of  
7 administrative hearings of the department of commerce and  
8 consumer affairs, as follows:

9 (1) The party requesting the hearing must be a board of  
10 directors of a duly registered association of  
11 apartment owners, or an apartment owner that is a  
12 member of a duly registered association pursuant to  
13 section 514B-103;

14 (2) The request for hearing must be filed within thirty  
15 days from the final day of mediation;

16 (3) The request for hearing must name one or more parties  
17 that participated in the mediation as an adverse party  
18 and identify the statutory provisions in dispute; and

19 (4) The subject matter of the hearing before the hearing  
20 officer may include any matter that was the subject of  
21 the mediation pursuant to subsection (a).



1       (f) The office of administrative hearings of the  
2 department of commerce and consumer affairs shall accept no more  
3 than thirty requests for hearing per fiscal year under this  
4 section.

5       (g) The party requesting the hearing shall pay a filing  
6 fee of \$25 to the department of commerce and consumer affairs,  
7 and the failure to do so shall result in the request for hearing  
8 being rejected for filing. All other parties shall file a  
9 response, accompanied by a filing fee of \$25 to the department  
10 of commerce and consumer affairs, within twenty days of being  
11 served with the request for hearing.

12       (h) The hearings officers appointed by the director of  
13 commerce and consumer affairs pursuant to section 26-9(f) shall  
14 have jurisdiction to review any request for hearing filed under  
15 subsection (e). The hearings officers shall have the power to  
16 issue subpoenas, administer oaths, hear testimony, find facts,  
17 make conclusions of law, and issue written decisions that shall  
18 be final and conclusive, unless a party adversely affected by  
19 the decision files an appeal in the circuit court under section  
20 91-14.

21       (i) Rules of practice and procedure of the department of  
22 commerce and consumer affairs, shall govern all proceedings



1 brought under this section. The burden of proof, including the  
2 burden of producing the evidence and the burden of persuasion,  
3 shall be upon the party initiating the proceeding. Proof of a  
4 matter shall be by a preponderance of the evidence.

5 (j) Hearings to review and make determinations upon any  
6 requests for hearings filed under subsection (e) shall commence  
7 within sixty days following the receipt of the request for  
8 hearing. The hearings officer shall issue written findings of  
9 fact, conclusions of law, and an order as expeditiously as  
10 practicable after the hearing has been concluded.

11 (k) Each party to the hearing shall bear the party's own  
12 costs, including attorney's fees, unless otherwise ordered by  
13 the hearing officer.

14 (l) Any party to a proceeding under this section who is  
15 aggrieved by a final decision of a hearings officer may apply  
16 for judicial review of that decision pursuant to section 91-14;  
17 provided that any party seeking judicial review pursuant to  
18 section 91-14 shall be responsible for the costs of preparing  
19 the record on appeal, including the cost of preparing the  
20 transcript of the hearing.



1        (m) The department of commerce and consumer affairs may  
2 adopt rules and forms, pursuant to chapter 91, to effectuate the  
3 purpose of this section and to implement its provisions."

4        SECTION 2. Section 514B-162, Hawaii Revised Statutes, is  
5 amended by amending subsection (a) to read as follows:

6        "(a) At the request of any party, any dispute concerning  
7 or involving one or more unit owners and an association, its  
8 board, managing agent, or one or more other unit owners relating  
9 to the interpretation, application, or enforcement of this  
10 chapter or the association's declaration, bylaws, or house rules  
11 adopted in accordance with its bylaws [~~shall~~] may be submitted  
12 to arbitration. The arbitration [~~shall~~] may be conducted,  
13 unless otherwise agreed by the parties, in accordance with the  
14 rules adopted by the commission and of chapter 658A; provided  
15 that the rules of the arbitration service conducting the  
16 arbitration shall be used until the commission adopts its rules;  
17 provided further that where any arbitration rule conflicts with  
18 chapter 658A, chapter 658A shall prevail; and provided further  
19 that notwithstanding any rule to the contrary, the arbitrator  
20 shall conduct the proceedings in a manner which affords  
21 substantial justice to all parties. The arbitrator shall be  
22 bound by rules of substantive law and shall not be bound by



1 rules of evidence, whether or not set out by statute, except for  
 2 provisions relating to privileged communications. The  
 3 arbitrator shall permit discovery as provided for in the Hawaii  
 4 rules of civil procedure; provided that the arbitrator may  
 5 restrict the scope of such discovery for good cause to avoid  
 6 excessive delay and costs to the parties or the arbitrator may  
 7 refer any matter involving discovery to the circuit court for  
 8 disposition in accordance with the Hawaii rules of civil  
 9 procedure then in effect."

10 SECTION 3. This Act does not affect rights and duties that  
 11 matured, penalties that were incurred, and proceedings that were  
 12 begun, before its effective date.

13 SECTION 4. Statutory material to be repealed is bracketed  
 14 and stricken. New statutory material is underscored.

15 SECTION 5. This Act shall take effect upon its approval.  
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INTRODUCED BY:

*Karen Awana*

*Pido T. R. Cabonilla*

*Joseph M. Henry*

*J. M. Krentler*

*St. U*

*Manfred*

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**Report Title:**

Mediation

**Description:**

Requires mediators to provide written notification of the status of a mediation request to all parties named in the request. Provides for administrative hearing for disputes unresolved by mediation.

