

JAN 27 2016

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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. Chapter 514B, Hawaii Revised Statutes, is  
2       amended by adding a new part to be appropriately designated and  
3       to read as follows:  
4               "PART       . OFFICE OF THE CONDOMINIUM OMBUDSMAN  
5       §514B-A Office of the condominium ombudsman; condominium  
6       ombudsman. There is established within the department of  
7       commerce and consumer affairs the office of the condominium  
8       ombudsman. The office of the condominium ombudsman shall be  
9       headed by the condominium ombudsman, who shall be appointed by  
10      the director of commerce and consumer affairs with the approval  
11      of the governor. The condominium ombudsman shall have been  
12      admitted to practice law before the supreme court of this State  
13      and shall have extensive experience in Hawaii real estate and  
14      condominium law and in conflict and alternative dispute  
15      resolution. The condominium ombudsman shall be exempt from  
16      chapter 76.



1           **§514B-B Personnel; salary; benefits.** (a) The condominium

2 ombudsman may appoint as staff members persons who have been  
3 admitted to practice law before the supreme court of this State  
4 without regard to chapter 76. All other employees shall be  
5 appointed by the ombudsman in accordance with chapter 76.

6           (b) The salary of the condominium ombudsman shall be set  
7 by the director of commerce and consumer affairs but shall not  
8 be more than the maximum salary of the first deputy to the  
9 director of commerce and consumer affairs. The condominium  
10 ombudsman and attorney staff members shall be included in any  
11 benefit program generally applicable to the officers and  
12 employees of the State.

13           **§514B-C Powers and duties.** The condominium ombudsman  
14 shall:

- 15           (1) Investigate disputes brought by unit owners, pursuant  
16               to section 514B-D;
- 17           (2) Make recommendations, give guidance, or offer advice  
18               to parties involved in a dispute, as necessary to  
19               assist the parties in resolving disputes;
- 20           (3) Upon request, assist unit owners or boards of  
21               directors with processing requests submitted to



1 alternative dispute resolution pursuant to part VI,  
2 subpart D;

3 (4) In conjunction with the commission and via moneys in  
4 the condominium education trust fund, educate the  
5 public and those required to be registered under this  
6 chapter; and

7 (5) Adopt rules in accordance with chapter 91 necessary to  
8 carry out the purposes of this part.

9 §514B-D Request for dispute intervention; intervention  
10 affidavit. (a) Except as otherwise provided in this section, a  
11 unit owner who is party to a dispute involving the  
12 interpretation or enforcement of an association's declaration,  
13 bylaws, or house rules may file with the office of the  
14 condominium ombudsman a written request for dispute  
15 intervention. The written request shall be in the form of an  
16 affidavit that sets forth the facts constituting the dispute.

17 (b) Prior to submission of an intervention affidavit, a  
18 unit owner shall provide the association or board with written  
19 notice of the dispute as set forth in the intervention  
20 affidavit. The notice shall be sent by means of certified mail,



1 return receipt requested and deliver to addressee only. The  
2 notice shall specify, in reasonable detail:

3 (1) The dispute;

4 (2) Any alleged damages that resulted from the dispute;  
5 and

6 (3) Any proposed corrective action to resolve the dispute.

7 (c) An intervention affidavit filed with the office of the  
8 condominium ombudsman pursuant to this section shall be on a  
9 form prescribed by the office and be accompanied by evidence  
10 that:

11 (1) The respondent has been given a reasonable  
12 opportunity, after receiving the written notice, to  
13 correct the dispute; and

14 (2) Reasonable efforts to resolve the dispute have failed.

15 (d) The commission may impose a fine of not more than  
16 \$1,000 against any person who knowingly files a false or  
17 fraudulent intervention affidavit with the office of the  
18 condominium ombudsman.

19 (e) A written request for dispute intervention under  
20 subsection (a) may not be filed by any unit owner who is  
21 currently serving as a member of a board.



1       §514B-E Investigation by condominium ombudsman; dispute  
2 resolution assistance. (a) Upon receipt of an intervention  
3 affidavit pursuant to section 514B-D, the condominium ombudsman  
4 shall open an investigation into the dispute.

5       (b) The condominium ombudsman may interview parties and  
6 witnesses involved in the dispute and may request the production  
7 of documents, records, and information pursuant to section  
8 514B-154.5.

9       (c) The condominium ombudsman shall make recommendations,  
10 give guidance, or offer advice to the parties as the condominium  
11 ombudsman deems necessary to assist the parties in resolving the  
12 dispute.

13       (d) If the condominium ombudsman determines an association  
14 or board is at fault in a dispute, the association or board  
15 shall be responsible for any legal fees incurred or fines levied  
16 against the unit owner involved in the dispute.

17       (e) The commission may impose a fine of not more than  
18 \$1,000 on the respondent, including the board, other management  
19 entities, or both, if the respondent knowingly submits false or  
20 fraudulent information in the process of the ombudsman's  
21 investigations.



1       (f) If the parties cannot reach an agreement under this  
2 section, either party may request participation in alternative  
3 dispute resolution available under part VI, subpart D. Upon  
4 request, the condominium ombudsman shall provide either party  
5 with information regarding available mediation or arbitration  
6 options."

7       SECTION 2. Section 28-8.3, Hawaii Revised Statutes, is  
8 amended by amending subsection (a) to read as follows:

9       "(a) No department of the State other than the attorney  
10 general may employ or retain any attorney, by contract or  
11 otherwise, for the purpose of representing the State or the  
12 department in any litigation, rendering legal counsel to the  
13 department, or drafting legal documents for the department;  
14 provided that the foregoing provision shall not apply to the  
15 employment or retention of attorneys:

16       (1) By the public utilities commission, the labor and  
17 industrial relations appeals board, and the Hawaii  
18 labor relations board;

19       (2) By any court or judicial or legislative office of the  
20 State; provided that if the attorney general is  
21 requested to provide representation to a court or



1           judicial office by the chief justice or the chief  
2           justice's designee, or to a legislative office by the  
3           speaker of the house of representatives and the  
4           president of the senate jointly, and the attorney  
5           general declines to provide such representation on the  
6           grounds of conflict of interest, the attorney general  
7           shall retain an attorney for the court, judicial, or  
8           legislative office, subject to approval by the court,  
9           judicial, or legislative office;

10       (3) By the legislative reference bureau;

11       (4) By any compilation commission that may be constituted  
12       from time to time;

13       (5) By the real estate commission for any action involving  
14       the real estate recovery fund;

15       (6) By the contractors license board for any action  
16       involving the contractors recovery fund;

17       (7) By the office of Hawaiian affairs;

18       (8) By the department of commerce and consumer affairs for  
19       the enforcement of violations of chapters 480 and  
20       485A;

21       (9) As grand jury counsel;



- 1       (10) By the Hawaii health systems corporation, or its  
2           regional system boards, or any of their facilities;
- 3       (11) By the auditor;
- 4       (12) By the office of ombudsman;
- 5       (13) By the insurance division;
- 6       (14) By the University of Hawaii;
- 7       (15) By the Kahoolawe island reserve commission;
- 8       (16) By the division of consumer advocacy;
- 9       (17) By the office of elections;
- 10      (18) By the campaign spending commission;
- 11      (19) By the Hawaii tourism authority, as provided in  
12          section 201B-2.5;
- 13      (20) By the division of financial institutions for any  
14          action involving the mortgage loan recovery fund;
- 15      (21) By the office of information practices; ~~[or]~~
- 16      (22) By the office of the condominium ombudsman; or
- 17      ~~[-(22)-]~~ (23) By a department, if the attorney general, for  
18          reasons deemed by the attorney general to be good and  
19          sufficient, declines to employ or retain an attorney  
20          for a department; provided that the governor waives  
21          the provision of this section."



1       SECTION 3. Section 514B-3, Hawaii Revised Statutes, is  
2 amended by adding a new definition to be appropriately inserted  
3 and to read as follows:

4       "Condominium ombudsman" means the condominium ombudsman  
5 established pursuant to section 514B-A."

6       SECTION 4. Section 514B-22, Hawaii Revised Statutes, is  
7 amended to read as follows:

8       "**§514B-22 Applicability to preexisting condominiums.**

9 Sections 514B-4, 514B-5, 514B-35, 514B-41(c), 514B-46, 514B-72,

10 [~~and~~] part VI, part , and section 514B-3 to the extent

11 definitions are necessary in construing any of those provisions,

12 and all amendments thereto, apply to all condominiums created in

13 this State before July 1, 2006; provided that those sections:

14       (1) Shall apply only with respect to events and

15       circumstances occurring on or after July 1, 2006; and

16       (2) Shall not invalidate existing provisions of the

17       declaration, bylaws, condominium map, or other

18       constituent documents of those condominiums if to do

19       so would invalidate the reserved rights of a developer

20       or be an unreasonable impairment of contract.



1 For purposes of interpreting this chapter, the terms  
2 "condominium property regime" and "horizontal property regime"  
3 shall be deemed to correspond to the term "condominium"; the  
4 term "apartment" shall be deemed to correspond to the term  
5 "unit"; the term "apartment owner" shall be deemed to correspond  
6 to the term "unit owner"; and the term "association of apartment  
7 owners" shall be deemed to correspond to the term  
8 "association".

9 SECTION 5. Section 514B-71, Hawaii Revised Statutes, is  
10 amended to read as follows:

11 "§514B-71 Condominium education trust fund. (a) The  
12 commission shall establish a condominium education trust fund  
13 that the commission and the office of the condominium ombudsman  
14 shall use for educational purposes. Educational purposes shall  
15 include financing or promoting:

16 (1) Education and research in the field of condominium  
17 management, condominium project registration, and real  
18 estate, for the benefit of the public and those  
19 required to be registered under this chapter;

20 (2) The improvement and more efficient administration of  
21 associations;



1 (3) Expeditious and inexpensive procedures for resolving  
2 association disputes; and

3 (4) Support for mediation of condominium related disputes.

4 (b) The commission and office of the condominium ombudsman  
5 shall use all moneys in the condominium education trust fund for  
6 purposes consistent with subsection (a)."

7 SECTION 6. Section 514B-73, Hawaii Revised Statutes, is  
8 amended as follows:

9 1. By amending subsection (b) to read:

10 "(b) The commission and the director of commerce and  
11 consumer affairs may use moneys in the condominium education  
12 trust fund collected pursuant to sections 514A-40, 514A-95.1,  
13 and 514B-72, and the rules of the commission to employ necessary  
14 personnel not subject to chapter 76 for additional staff  
15 support, to provide office space, and to purchase equipment,  
16 furniture, and supplies required by the commission to carry out  
17 its responsibilities under this part. The condominium ombudsman  
18 may use moneys in the condominium education trust fund collected  
19 pursuant to sections 514A-40, 514A-95.1, and 514B-72, for  
20 educational purposes, including the necessary purchase of  
21 equipment and supplies required by the office of the condominium



1 ombudsman to carry out its responsibilities under this part and  
2 part \_\_\_\_\_."

3 2. By amending subsection (d) to read:

4 "(d) The commission, in conjunction with the office of the  
5 condominium ombudsman, shall annually submit to the legislature,  
6 no later than twenty days prior to the convening of each regular  
7 session:

8 (1) A summary of the programs funded during the prior  
9 fiscal year and the amount of money in the fund,  
10 including a statement of which programs were directed  
11 specifically at the education of condominium owners;  
12 and

13 (2) A copy of the budget for the current fiscal year,  
14 including summary information on programs that were  
15 funded or are to be funded and the target audience for  
16 each program. The budget shall include a line item  
17 reflecting the total amount collected from condominium  
18 associations."

19 SECTION 7. Section 514B-104, Hawaii Revised Statutes, is  
20 amended by amending subsection (a) to read as follows:



1       "(a) Except as provided in section 514B-105, and subject  
2 to the provisions of the declaration and bylaws, the  
3 association, even if unincorporated, may:

4       (1) Adopt and amend the declaration, bylaws, and rules and  
5 regulations;

6       (2) Adopt and amend budgets for revenues, expenditures,  
7 and reserves and collect assessments for common  
8 expenses from unit owners, subject to section  
9 514B-148;

10      (3) Hire and discharge managing agents and other  
11 independent contractors, agents, and employees;

12      (4) Institute, defend, or intervene in litigation or  
13 administrative proceedings in its own name on behalf  
14 of itself or two or more unit owners on matters  
15 affecting the condominium. For the purposes of  
16 actions under chapter 480, associations shall be  
17 deemed to be "consumers";

18      (5) Make contracts and incur liabilities;

19      (6) Regulate the use, maintenance, repair, replacement,  
20 and modification of common elements;



1 (7) Cause additional improvements to be made as a part of  
2 the common elements;

3 (8) Acquire, hold, encumber, and convey in its own name  
4 any right, title, or interest to real or personal  
5 property; provided that:

6 (A) Designation of additional areas to be common  
7 elements or subject to common expenses after the  
8 initial filing of the declaration or bylaws shall  
9 require the approval of at least sixty-seven per  
10 cent of the unit owners;

11 (B) If the developer discloses to the initial buyer  
12 in writing that additional areas will be  
13 designated as common elements whether pursuant to  
14 an incremental or phased project or otherwise,  
15 the requirements of this paragraph shall not  
16 apply as to those additional areas; and

17 (C) The requirements of this paragraph shall not  
18 apply to the purchase of a unit for a resident  
19 manager, which may be purchased with the approval  
20 of the board;



(9) Subject to section 514B-38, grant easements, leases, licenses, and concessions through or over the common elements and permit encroachments on the common elements;

(10) Impose and receive any payments, fees, or charges for the use, rental, or operation of the common elements, other than limited common elements described in section 514B-35(2) and (4), and for services provided to unit owners;

(11) Impose charges and penalties, including late fees and interest, for late payment of assessments and levy reasonable fines for violations of the declaration, bylaws, rules, and regulations of the association, either in accordance with the bylaws or, if the bylaws are silent, pursuant to a resolution adopted by the board that establishes a fining procedure that states the basis for the fine and allows an appeal to the board of the fine with notice and an opportunity to be heard and providing that if the fine is paid, the unit owner shall have the right to initiate a dispute resolution process as provided by ~~[sections]~~ section



1           514B-161[7] or 514B-162, by requesting dispute  
2           intervention or dispute resolution assistance from the  
3           condominium ombudsman as provided by section 514B-D or  
4           514B-E, or by filing a request for an administrative  
5           hearing under a pilot program administered by the  
6           department of commerce and consumer affairs;

7       (12) Impose reasonable charges for the preparation and  
8           recordation of amendments to the declaration,  
9           documents requested for resale of units, or statements  
10          of unpaid assessments;

11       (13) Provide for cumulative voting through a provision in  
12          the bylaws;

13       (14) Provide for the indemnification of its officers,  
14          board, committee members, and agents, and maintain  
15          directors' and officers' liability insurance;

16       (15) Assign its right to future income, including the right  
17          to receive common expense assessments, but only to the  
18          extent section 514B-105(e) expressly so provides;

19       (16) Exercise any other powers conferred by the declaration  
20          or bylaws;



(17) Exercise all other powers that may be exercised in this State by legal entities of the same type as the association, except to the extent inconsistent with this chapter;

(18) Exercise any other powers necessary and proper for the governance and operation of the association; and

(19) By regulation, subject to sections 514B-146, 514B-161, and 514B-162, require that disputes between the board and unit owners or between two or more unit owners regarding the condominium be submitted to nonbinding alternative dispute resolution in the manner described in the regulation as a prerequisite to commencement of a judicial proceeding."

SECTION 8. Section 514B-105, Hawaii Revised Statutes, is amended to read as follows:

"§514B-105 Association; limitations on powers. (a) The declaration and bylaws may not impose limitations on the power of the association to deal with the developer which are more restrictive than the limitations imposed on the power of the association to deal with other persons.



(b) Unless otherwise permitted by the declaration, bylaws, or this chapter, an association may adopt rules and regulations that affect the use of or behavior in units that may be used for residential purposes only to:

(1) Prevent any use of a unit which violates the declaration or bylaws;

(2) Regulate any behavior in or occupancy of a unit which violates the declaration or bylaws or unreasonably interferes with the use and enjoyment of other units or the common elements by other unit owners; or

(3) Restrict the leasing of residential units to the extent those rules are reasonably designed to meet underwriting requirements of institutional lenders who regularly lend money secured by first mortgages on units in condominiums or regularly purchase those mortgages.

Otherwise, the association may not regulate any use of or behavior in units by means of the rules and regulations.

(c) No association shall deduct and apply portions of common expense payments received from a unit owner to unpaid late fees, legal fees, fines, and interest (other than amounts



1 remitted by a unit in payment of late fees, legal fees, fines,  
2 and interest) unless the board adopts and distributes to all  
3 owners a policy stating that:

4 (1) Failure to pay late fees, legal fees, fines, and  
5 interest may result in the deduction of such late  
6 fees, legal fees, fines, and interest from future  
7 common expense payments, so long as a delinquency  
8 continues to exist; and

9 (2) Late fees may be imposed against any future common  
10 expense payment that is less than the full amount owed  
11 due to the deduction of unpaid late fees, legal fees,  
12 fines, and interest from the payment.

13 (d) No unit owner who requests legal or other information  
14 from the association, the board, the managing agent, or their  
15 employees or agents, shall be charged for the reasonable cost of  
16 providing the information unless the association notifies the  
17 unit owner that it intends to charge the unit owner for the  
18 reasonable cost. The association shall notify the unit owner in  
19 writing at least ten days prior to incurring the reasonable cost  
20 of providing the information, except that no prior notice shall  
21 be required to assess the reasonable cost of providing



1 information on delinquent assessments or in connection with  
2 proceedings to enforce the law or the association's governing  
3 documents.

4 After being notified of the reasonable cost of providing  
5 the information, the unit owner may withdraw the request, in  
6 writing. A unit owner who withdraws a request for information  
7 shall not be charged for the reasonable cost of providing the  
8 information.

9 (e) Subject to any approval requirements and spending  
10 limits contained in the declaration or bylaws, the association  
11 may authorize the board to borrow money for the repair,  
12 replacement, maintenance, operation, or administration of the  
13 common elements and personal property of the project, or the  
14 making of any additions, alterations, and improvements thereto;  
15 provided that written notice of the purpose and use of the funds  
16 is first sent to all unit owners and owners representing fifty  
17 per cent of the common interest vote or give written consent to  
18 the borrowing[-]; provided further that if the cost of borrowing  
19 is a major expenditure in excess of \$10,000 per unit owner, the  
20 board shall hold a special meeting of the association to approve  
21 the expenditure. In connection with the borrowing, the board



1 may grant to the lender the right to assess and collect monthly  
2 or special assessments from the unit owners and to enforce the  
3 payment of the assessments or other sums by statutory lien and  
4 foreclosure proceedings. The cost of the borrowing, including,  
5 without limitation, all principal, interest, commitment fees,  
6 and other expenses payable with respect to the borrowing or the  
7 enforcement of the obligations under the borrowing, shall be a  
8 common expense of the project. For purposes of this section,  
9 the financing of insurance premiums by the association within  
10 the policy period shall not be deemed a loan and no lease shall  
11 be deemed a loan if it provides that at the end of the lease the  
12 association may purchase the leased equipment for its fair  
13 market value.

14 (f) If the association or the board is involved in a  
15 dispute intervention through the office of the condominium  
16 ombudsman, pursuant to section 514B-D, no special assessment  
17 related to the dispute, including association attorneys' fees,  
18 shall be assessed or collected from unit owners until the  
19 condominium ombudsman has completed the intervention  
20 investigation."



1       SECTION 9. Section 514B-154.5, Hawaii Revised Statutes, is  
2 amended to read as follows:

3       " [†] §514B-154.5 [†] Association documents to be provided.

4       (a) Notwithstanding any other provision in the declaration,  
5 bylaws, or house rules, if any, the following documents,  
6 records, and information, whether maintained, kept, or required  
7 to be provided pursuant to this section or section 514B-152,  
8 514B-153, or 514B-154, shall be made available to any unit owner  
9 and the owner's authorized agents by the managing agent,  
10 resident manager, board through a board member, or the  
11 association's representative:

12       (1) All financial and other records sufficiently detailed  
13 in order to comply with requests for information and  
14 disclosures related to the resale of units;

15       (2) An accurate copy of the declaration, bylaws, house  
16 rules, if any, master lease, if any, a sample original  
17 conveyance document, and all public reports and any  
18 amendments thereto;

19       (3) Detailed, accurate records in chronological order of  
20 the receipts and expenditures affecting the common  
21 elements, specifying and itemizing the maintenance and



1 repair expenses of the common elements and any other  
2 expenses incurred and monthly statements indicating  
3 the total current delinquent dollar amount of any  
4 unpaid assessments for common expenses;

5 (4) All records and the vouchers authorizing the payments  
6 and statements kept and maintained at the address of  
7 the project, or elsewhere within the State as  
8 determined by the board, subject to section 514B-152;

9 (5) All signed and executed agreements for managing the  
10 operation of the property, expressing the agreement of  
11 all parties, including but not limited to financial  
12 and accounting obligations, services provided, and any  
13 compensation arrangements, including any subsequent  
14 amendments;

15 (6) An accurate and current list of members of the  
16 condominium association and the members' current  
17 addresses and the names and addresses of the vendees  
18 under an agreement of sale, if any. A copy of the  
19 list shall be available, at cost, to any unit owner or  
20 owner's authorized agent who furnishes to the managing



1 agent, resident manager, or the board a duly executed  
2 and acknowledged affidavit stating that the list:

3 (A) Shall be used by the unit owner or owner's  
4 authorized agent personally and only for the  
5 purpose of soliciting votes or proxies or for  
6 providing information to other unit owners with  
7 respect to association matters; and

8 (B) Shall not be used by the unit owner or owner's  
9 authorized agent or furnished to anyone else for  
10 any other purpose;

11 (7) The association's most current financial statement, at  
12 no cost or on twenty-four-hour loan, at a convenient  
13 location designated by the board;

14 (8) Meeting minutes of the association, pursuant to  
15 section 514B-122;

16 (9) Meeting minutes of the board, including executive  
17 session records of voting results regarding the  
18 imposition of special assessments, charges, and fines,  
19 including legal fees, pursuant to section 514B-126,  
20 which shall be:



1 (A) Available for examination by unit owners or  
2 owners' authorized agents at no cost or on  
3 twenty-four-hour loan at a convenient location at  
4 the project, to be determined by the board; or

5 (B) Transmitted to any unit owner or owner's  
6 authorized agent making a request for the minutes  
7 within fifteen days of receipt of the request by  
8 the owner or owner's authorized agent; provided  
9 that:

10 (i) The minutes shall be transmitted by mail,  
11 electronic mail transmission, or facsimile,  
12 by the means indicated by the owner or  
13 owner's authorized agent, if the owner or  
14 owner's authorized agent indicated a  
15 preference at the time of the request; and

16 (ii) The owner or owner's authorized agent shall  
17 pay a reasonable fee for administrative  
18 costs associated with handling the request,  
19 subject to section 514B-105(d);

20 (10) Financial statements, general ledgers, the accounts  
21 receivable ledger, accounts payable ledgers, check



1           ledgers, insurance policies, contracts, and invoices  
2           of the association for the duration those records are  
3           kept by the association, and any documents regarding  
4           delinquencies of ninety days or more shall be  
5           available for examination by unit owners or owners'  
6           authorized agents at convenient hours at a place  
7           designated by the board; provided that:

8           (A)   The board may require unit owners or owners'  
9                 authorized agents to furnish to the association a  
10                duly executed and acknowledged affidavit stating  
11                that the information is requested in good faith  
12                for the protection of the interests of the  
13                association, its members, or both; and

14           (B)   Unit owners or owners' authorized agents shall  
15                 pay for administrative costs in excess of eight  
16                 hours per year;

17           (11)   Proxies, tally sheets, ballots, unit owners' check-in  
18                 lists, and the certificate of election subject to  
19                 section 514B-154(c);

20           (12)   Copies of an association's documents, records, and  
21                 information, whether maintained, kept, or required to



1 be provided pursuant to this section or section

2 514B-152, 514B-153, or 514B-154;

3 (13) A copy of the management contract from the entity that  
4 manages the operation of the property before the  
5 organization of an association; and

6 (14) Other documents requested by a unit owner or owner's  
7 authorized agent in writing; provided that the board  
8 shall give written authorization or written refusal  
9 with an explanation of the refusal within thirty  
10 calendar days of receipt of a request for documents  
11 pursuant to this paragraph.

12 (b) Subject to section 514B-105(d), copies of the items in  
13 subsection (a) shall be provided to any unit owner or owner's  
14 authorized agent upon the owner's or owner's authorized agent's  
15 request; provided that the owner or owner's authorized agent  
16 pays a reasonable fee for duplication, postage, stationery, and  
17 other administrative costs associated with handling the request.

18 (c) Notwithstanding any provision in the declaration,  
19 bylaws, or house rules providing for another period of time, all  
20 documents, records, and information listed under subsection (a),  
21 whether maintained, kept, or required to be provided pursuant to



1 this section or section 514B-152, 514B-153, or 514B-154, shall  
2 be provided no later than thirty days after receipt of a unit  
3 owner's or owner's authorized agent's written request, unless a  
4 lesser time is provided pursuant to this section or section  
5 514B-152, 514B-153, or 514B-154, and except as provided in  
6 subsection (a)(14).

7 (d) Any documents, records, and information, whether  
8 maintained, kept, or required to be provided pursuant to this  
9 section or section 514B-152, 514B-153, or 514B-154, may be made  
10 available electronically to the unit owner or owner's authorized  
11 agent if the owner or owner's authorized agent requests such in  
12 writing.

13 (e) An association may comply with this section or section  
14 514B-152, 514B-153, or 514B-154 by making the required  
15 documents, records, and information available to unit owners or  
16 owners' authorized agents for download through an internet site,  
17 at the option of each unit owner or owner's authorized agent and  
18 at no cost to the unit owner or owner's authorized agent.

19 (f) Any fee charged to a unit owner or owner's authorized  
20 agent to obtain copies of the association's documents, records,  
21 and information, whether maintained, kept, or required to be



1 provided pursuant to this section or section 514B-152, 514B-153,  
2 or 514B-154, shall be reasonable; provided that a reasonable fee  
3 shall include administrative and duplicating costs and shall not  
4 exceed \$1 per page, or portion thereof, except that the fee for  
5 pages exceeding eight and one-half inches by fourteen inches may  
6 exceed \$1 per page.

7 (g) Copies of the items in subsection (a) shall be  
8 provided to the condominium ombudsman no later than thirty days  
9 after receipt of the condominium ombudsman's request; provided  
10 that if the condominium ombudsman is denied access to any item  
11 in subsection (a), the condominium ombudsman may request the  
12 commission to conduct an investigation of the matter pursuant to  
13 section 514B-65.

14 [~~g~~] (h) This section shall apply to condominiums  
15 organized under chapter 514A or 514B.

16 [~~h~~] (i) Nothing in this section shall be construed to  
17 create any new requirements for the release of documents,  
18 records, or information."

19 SECTION 10. Section 514B-157, Hawaii Revised Statutes, is  
20 amended to read as follows:



1        "~~[+]~~ §514B-157~~[+]~~ Attorneys' fees, delinquent assessments,  
2    and expenses of enforcement.    (a)   Fees for attorneys' services  
3    incurred by a board shall not be reimbursed by individual unit  
4    owners when such services are for the purposes of:

5        (1)   Responding to written or oral inquiries, comments, or  
6            complaints by unit owners regarding condominium  
7            operations, property usage, board fiduciary duties,  
8            common elements, and resident actions;

9        (2)   Expressing unit owners' intentions to challenge the  
10          existing declaration, bylaws, and rules of the  
11          association; or

12       (3)   Participation in criminal defense resulting from unit  
13          owners' allegations of wrongdoing based on the board's  
14          performance of fiduciary responsibilities.

15       ~~[+a+]~~ (b)   All costs and expenses, including reasonable  
16    attorneys' fees, incurred by or on behalf of the association  
17    for:

18       (1)   Collecting any delinquent assessments against any  
19            owner's unit;

20       (2)   Foreclosing any lien thereon; or



1           (3)   Enforcing any provision of the declaration, bylaws,  
2                   house rules, and this chapter, or the rules of the  
3                   real estate commission[+],  
4   against an owner, occupant, tenant, employee of an owner, or any  
5   other person who may in any manner use the property, shall be  
6   promptly paid on demand to the association by such person or  
7   persons; provided that if the claims upon which the association  
8   takes any action are not substantiated, all costs and expenses,  
9   including reasonable attorneys' fees, incurred by any such  
10   person or persons as a result of the action of the association,  
11   shall be promptly paid on demand to such person or persons by  
12   the association[-]; provided further that if a unit owner opens  
13   an investigation with the office of the condominium ombudsman,  
14   costs and expenses for enforcement shall be suspended until the  
15   condominium ombudsman completes the investigation and issues a  
16   recommendation on the matter.

17           [~~(b)~~] (c)   If any claim by an owner is substantiated in any  
18   action against an association, any of its officers or directors,  
19   or its board to enforce any provision of the declaration,  
20   bylaws, house rules, or this chapter, then all reasonable and  
21   necessary expenses, costs, and attorneys' fees incurred by an



1 owner shall be awarded to such owner; provided that no such  
2 award shall be made in any derivative action unless:

- 3 (1) The owner first shall have demanded and allowed  
4 reasonable time for the board to pursue such  
5 enforcement; or  
6 (2) The owner demonstrates to the satisfaction of the  
7 court that a demand for enforcement made to the board  
8 would have been fruitless.

9 If any claim by an owner is not substantiated in any court  
10 action against an association, any of its officers or directors,  
11 or its board to enforce any provision of the declaration,  
12 bylaws, house rules, or this chapter, then all reasonable and  
13 necessary expenses, costs, and attorneys' fees incurred by an  
14 association shall be awarded to the association, unless before  
15 filing the action in court the owner has first submitted the  
16 claim to mediation, or to arbitration under subpart D, and made  
17 a good faith effort to resolve the dispute under any of those  
18 procedures. Plaintiff condominium unit owner did not "incur"  
19 attorneys' fees and costs in owner's action against defendant  
20 condominium association and was therefore not entitled to  
21 attorneys' fees and costs beyond the portion of the total amount



1 requested that plaintiff paid where law firm representing  
2 plaintiff's billing statements were sent to a third party and  
3 there was no agreement with law firm contractually binding  
4 plaintiff to pay those fees and costs; in order for plaintiff  
5 condominium unit owner to have "incurred" attorneys' fees and  
6 costs under subsection (b) in an action against defendant  
7 condominium association, plaintiff must have paid or be legally  
8 obligated to pay the fees and costs to the law firm representing  
9 plaintiff."

10 SECTION 11. Section 514B-161, Hawaii Revised Statutes, is  
11 amended by amending subsection (a) to read as follows:

12 "(a) If an apartment owner or the board of directors  
13 requests mediation of a dispute involving the interpretation or  
14 enforcement of the association of apartment owners' declaration,  
15 bylaws, or house rules, the other party in the dispute shall be  
16 required to participate in mediation. Either party may request  
17 informational assistance regarding the mediation process from  
18 the office of the condominium ombudsman. Each party shall be  
19 wholly responsible for its own costs of participating in  
20 mediation, unless both parties agree that one party shall pay  
21 all or a specified portion of the mediation costs. If a party



1 refuses to participate in the mediation of a particular dispute,  
2 a court may take this refusal into consideration when awarding  
3 expenses, costs, and attorneys' fees."

4 SECTION 12. 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 be submitted to  
12 arbitration. Either party may request informational assistance  
13 regarding the arbitration from the office of the condominium  
14 ombudsman. The arbitration shall be conducted, unless otherwise  
15 agreed by the parties, in accordance with the rules adopted by  
16 the commission and of chapter 658A; provided that the rules of  
17 the arbitration service conducting the arbitration shall be used  
18 until the commission adopts its rules; provided further that  
19 where any arbitration rule conflicts with chapter 658A, chapter  
20 658A shall prevail; and provided further that notwithstanding  
21 any rule to the contrary, the arbitrator shall conduct the



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

12 SECTION 13. There is appropriated out of the general  
13 revenues of the State of Hawaii the sum of \$ or so  
14 much thereof as may be necessary for fiscal year 2016-2017 for  
15 administrative costs associated with the establishment of the  
16 office of the condominium ombudsman within the department of  
17 commerce and consumer affairs, including the hiring of necessary  
18 staff.

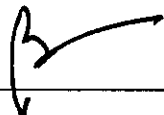
19 The sum appropriated shall be expended by the department of  
20 commerce and consumer affairs for the purposes of this Act.



1       SECTION 14. In codifying the new sections added by section  
2 1 of this Act, the revisor of statutes shall substitute  
3 appropriate section numbers for the letters used in designating  
4 the new sections in this Act.

5       SECTION 15. Statutory material to be repealed is bracketed  
6 and stricken. New statutory material is underscored.

7       SECTION 16. This Act shall take effect on July 1, 2016.

8  
INTRODUCED BY: 



# S.B. NO. 2760

**Report Title:**

Condominiums; Office of the Condominium Ombudsman; Condominium Ombudsman; Appropriation

**Description:**

Establishes the office of the condominium ombudsman, to be headed by the condominium ombudsman, within the department of commerce and consumer affairs. Appropriates funds for administrative costs associated with the establishment of the office of the condominium ombudsman.

*The summary description of legislation appearing on this page is for informational purposes only and is not legislation or evidence of legislative intent.*

