
A BILL FOR AN ACT

RELATING TO CONDOMINIUM ASSOCIATIONS.

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

1 SECTION 1. Section 514A-121, Hawaii Revised Statutes, is
2 amended to read as follows:

3 "**§514A-121 Arbitration of disputes.** (a) At the request of
4 any party, any dispute concerning or involving one or more
5 apartment owners and an association of apartment owners, its board
6 of directors, managing agent, or one or more other apartment
7 owners relating to the interpretation, application or enforcement
8 of chapter 514A or the association's declaration, bylaws, or house
9 rules adopted in accordance with its bylaws shall be submitted to
10 arbitration. The arbitration shall be conducted, unless otherwise
11 agreed by the parties, in accordance with the rules adopted by the
12 commission and [~~the provisions~~] of chapter 658A; provided that the
13 Condominium Property Regime Rules on Arbitration of Disputes of
14 the American Arbitration Association shall be used until the
15 commission adopts its rules; provided further that where any
16 arbitration rule conflicts with chapter 658A, chapter 658A shall
17 prevail; provided further that notwithstanding any rule to the



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

13 (b) Nothing in subsection (a) shall be interpreted to
14 mandate the arbitration of any dispute involving:

- 15 (1) The real estate commission;
- 16 (2) The mortgagee of a mortgage of record;
- 17 (3) The developer, general contractor, subcontractors, or
18 design professionals for the project; provided that
19 when any person exempted by this paragraph is also an
20 apartment owner, a director, or managing agent, such



- 1 person shall, in those capacities, be subject to [~~the~~
2 ~~provisions of~~] subsection (a);
- 3 (4) Actions seeking equitable relief involving threatened
4 property damage or the health or safety of apartment
5 owners or any other person;
- 6 (5) Actions to collect assessments that are liens or
7 subject to foreclosure; provided that an apartment
8 owner who pays the full amount of an assessment and
9 fulfills the requirements of section 514A-90(d) [~~shall~~
10 ~~have the right to~~] may demand arbitration of the
11 owner's dispute, including a dispute about the amount
12 and validity of the assessment;
- 13 (6) Personal injury claims;
- 14 (7) Actions for amounts in excess of \$2,500 against an
15 association of apartment owners, a board of directors,
16 or one or more directors, officers, agents, employees,
17 or other persons, if insurance coverage under a policy
18 or policies procured by the association of apartment
19 owners or its board of directors would be unavailable
20 because action by arbitration was pursued; or



1 (8) Any other cases [~~which~~] that are determined, as
2 provided in section 514A-122, to be unsuitable for
3 disposition by arbitration.

4 (c) The condominium education trust fund under section
5 514B-71 shall be used to pay the arbitrator's fees."

6 SECTION 2. Section 514A-121.5, Hawaii Revised Statutes, is
7 amended to read as follows:

8 "**§514A-121.5 Mediation.** (a) If an apartment owner or the
9 board of directors requests mediation of a dispute involving the
10 interpretation or enforcement of the association of apartment
11 owners' declaration, bylaws, or house rules, the other party in
12 the dispute shall be required to participate in mediation. Each
13 party shall be wholly responsible for its own costs of
14 participating in mediation, unless at the end of the mediation
15 process, both parties agree that one party shall pay all or a
16 specified portion of the mediation costs. If an apartment owner
17 or the board of directors refuses to participate in the mediation
18 of a particular dispute, a court may take this refusal into
19 consideration when awarding expenses, costs, and attorney's fees.



1 (b) If mediation fails to resolve the dispute, either
 2 party may elect to pursue binding arbitration under section
 3 514A-121."

4 SECTION 3. Section 514B-71, Hawaii Revised Statutes, is
 5 amended by amending subsection (a) to read as follows:

6 "(a) The commission shall establish a condominium
 7 education trust fund that the commission shall use for
 8 educational purposes. Educational purposes shall include
 9 financing or promoting:

10 (1) Education and research in the field of condominium
 11 management, condominium project registration, and real
 12 estate, for the benefit of the public and those
 13 required to be registered under this chapter;

14 (2) The improvement and more efficient administration of
 15 associations;

16 (3) Expeditious and inexpensive procedures for resolving
 17 association disputes; ~~and~~

18 (4) Support for mediation of condominium related
 19 disputes~~[-]~~, including:

20 (A) Disputes among members of the board; and



- 1 (B) Disputes that involve the association managing
- 2 agent; and
- 3 (5) Payment of arbitrator's fees for disputes under
- 4 sections 514A-121 and 514B-162."

5 SECTION 4. Section 514B-161, Hawaii Revised Statutes, is
6 amended to read as follows:

7 "**§514B-161 Mediation.** (a) If an apartment owner or the
8 board of directors requests mediation of a dispute involving the
9 interpretation or enforcement of the association of apartment
10 owners' declaration, bylaws, or house rules, the other party in
11 the dispute shall be required to participate in mediation. Each
12 party shall be wholly responsible for its own costs of
13 participating in mediation, unless both parties agree that one
14 party shall pay all or a specified portion of the mediation
15 costs. If a party refuses to participate in the mediation of a
16 particular dispute, a court may take this refusal into
17 consideration when awarding expenses, costs, and attorneys'
18 fees.

19 (b) Nothing in subsection (a) shall be interpreted to
20 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) If any mediation under this section is not completed
13 within two months from commencement, no further mediation shall
14 be required unless agreed to by the parties.

15 (d) If mediation fails to resolve the dispute, either
16 party may elect to pursue binding arbitration under section
17 514B-162."

18 SECTION 5. Section 514B-162, Hawaii Revised Statutes, is
19 amended to read as follows:

20 "[+]§514B-162[+] **Arbitration.** (a) At the request of any
21 party, any dispute concerning or involving one or more unit



1 owners and an association, its board, managing agent, or one or
2 more other unit owners relating to the interpretation,
3 application, or enforcement of this chapter or the association's
4 declaration, bylaws, or house rules adopted in accordance with
5 its bylaws shall be submitted to arbitration. The arbitration
6 shall be conducted, unless otherwise agreed by the parties, in
7 accordance with the rules adopted by the commission and of
8 chapter 658A; provided that the rules of the arbitration service
9 conducting the arbitration shall be used until the commission
10 adopts its rules; provided further that where any arbitration
11 rule conflicts with chapter 658A, chapter 658A shall prevail;
12 and provided further that notwithstanding any rule to the
13 contrary, the arbitrator shall conduct the proceedings in a
14 manner [~~which~~] that affords substantial justice to all parties.
15 The arbitrator shall be bound by rules of substantive law and
16 shall not be bound by rules of evidence, whether or not set out
17 by statute, except for provisions relating to privileged
18 communications. The arbitrator shall permit discovery as
19 provided for in the Hawaii rules of civil procedure; provided
20 that the arbitrator may restrict the scope of [~~such~~] the
21 discovery for good cause to avoid excessive delay and costs to



1 the parties or the arbitrator may refer any matter involving
2 discovery to the circuit court for disposition in accordance
3 with the Hawaii rules of civil procedure then in effect.

4 (b) Nothing in subsection (a) shall be interpreted to
5 mandate the arbitration of any dispute involving:

- 6 (1) The real estate commission;
- 7 (2) The mortgagee of a mortgage of record;
- 8 (3) The developer, general contractor, subcontractors, or
9 design professionals for the project; provided that
10 when any person exempted by this paragraph is also a
11 unit owner, a director, or managing agent, [~~such~~] the
12 person in those capacities, shall be subject to [~~the~~
13 ~~provisions of~~] subsection (a);
- 14 (4) Actions seeking equitable relief involving threatened
15 property damage or the health or safety of unit owners
16 or any other person;
- 17 (5) Actions to collect assessments [~~which~~] that are liens
18 or subject to foreclosure; provided that a unit owner
19 who pays the full amount of an assessment and fulfills
20 the requirements of section 514B-146 [~~shall have the~~
21 ~~right to~~] may demand arbitration of the owner's



- 1 dispute, including a dispute about the amount and
2 validity of the assessment;
- 3 (6) Personal injury claims;
- 4 (7) Actions for amounts in excess of \$2,500 against an
5 association, a board, or one or more directors,
6 officers, agents, employees, or other persons, if
7 insurance coverage under a policy or policies procured
8 by the association or its board would be unavailable
9 because action by arbitration was pursued; or
- 10 (8) Any other cases [~~which~~] that are determined, as
11 provided in subsection (c), to be unsuitable for
12 disposition by arbitration.

13 (c) At any time within twenty days of being served with a
14 written demand for arbitration, any party so served may apply to
15 the circuit court in the judicial circuit in which the
16 condominium is located for a determination that the subject
17 matter of the dispute is unsuitable for disposition by
18 arbitration.

19 In determining whether the subject matter of a dispute is
20 unsuitable for disposition by arbitration, a court may consider:



- 1 (1) The magnitude of the potential award, or any issue of
2 broad public concern raised by the subject matter
3 underlying the dispute;
- 4 (2) Problems referred to the court where court regulated
5 discovery is necessary;
- 6 (3) The fact that the matter in dispute is a reasonable or
7 necessary issue to be resolved in pending litigation
8 and involves other matters not covered by or related
9 to this chapter;
- 10 (4) The fact that the matter to be arbitrated is only part
11 of a dispute involving other parties or issues [~~which~~
12 that are not subject to arbitration under this
13 section; and
- 14 (5) Any matters of dispute where disposition by
15 arbitration, in the absence of complete judicial
16 review, would not afford substantial justice to one or
17 more of the parties.

18 Any [~~such~~] application to the circuit court made pursuant
19 to this subsection shall be made and heard in a summary manner
20 and in accordance with procedures for the making and hearing of



1 motions. The prevailing party shall be awarded its attorneys'
2 fees and costs in an amount not to exceed \$200.

3 (d) [~~In the event of~~] If a dispute [~~as to~~] arises on
4 whether a claim shall be excluded from mandatory arbitration
5 under subsection (b)(7), any party to an arbitration may file a
6 complaint for declaratory relief against the involved insurer or
7 insurers for a determination of whether insurance coverage is
8 unavailable due to the pursuit of action by arbitration. The
9 complaint shall be filed with the circuit court in the judicial
10 circuit in which the condominium is located. The insurer or
11 insurers shall file an answer to the complaint within twenty
12 days of the date of service of the complaint and the issue shall
13 be disposed of by the circuit court at a hearing to be held at
14 the earliest available date; provided that the hearing shall not
15 be held within twenty days from the date of service of the
16 complaint upon the insurer or insurers.

17 (e) Notwithstanding any provision in this chapter to the
18 contrary, the declaration, or the bylaws, the award of any
19 costs, expenses, and legal fees by the arbitrator shall be in
20 the sole discretion of the arbitrator and the determination of



1 costs, expenses, and legal fees shall be binding upon all
2 parties.

3 (f) The award of the arbitrator shall be in writing and
4 acknowledged or proved in like manner as a deed for the
5 conveyance of real estate, and shall be served by the arbitrator
6 on each of the parties to the arbitration, personally or by
7 registered or certified mail. At any time within one year after
8 the award is made and served, any party to the arbitration may
9 apply to the circuit court of the judicial circuit in which the
10 condominium is located for an order confirming the award. The
11 court shall grant the order confirming the award pursuant to
12 section 658A-22, unless the award is vacated, modified, or
13 corrected, as provided in sections 658A-20, 658A-23, and
14 658A-24, or a trial de novo is demanded under subsection (h), or
15 the award is successfully appealed under subsection (h). The
16 record shall be filed with the motion to confirm award, and
17 notice of the motion shall be served upon each other party or
18 their respective attorneys in the manner required for service of
19 notice of a motion.

20 (g) Findings of fact and conclusions of law, as requested
21 by any party prior to the arbitration hearing, shall be promptly



1 provided to the requesting party upon payment of the reasonable
2 cost thereof.

3 (h) Any party to an arbitration under this section may
4 apply to vacate, modify, or correct the arbitration award for
5 the grounds set out in chapter 658A. All reasonable costs,
6 expenses, and attorneys' fees on appeal shall be charged to the
7 nonprevailing party.

8 (i) The condominium education trust fund under section
9 514B-71 shall be used to pay the arbitrator's fees."

10 SECTION 6. 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 7. Statutory material to be repealed is bracketed
14 and stricken. New statutory material is underscored.

15 SECTION 8. This Act shall take effect upon its approval.

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INTRODUCED BY:

Linda L. Chingame
[Signature]
Jehan O...

JAN 25 2017



H.B. NO. 1499

Report Title:

Condominium Associations; Dispute Resolution

Description:

Authorizes use of the condominium education trust fund to fund disputes among board members or involving the managing agent, and to pay the arbitration fees. Authorizes the option for binding arbitration if mediation fails to resolve a dispute.

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

