
A BILL FOR AN ACT

RELATING TO ASSOCIATION LEGAL FEES.

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

1 SECTION 1. Section 421J-10.5, Hawaii Revised Statutes, is
2 amended by amending subsections (c) and (d) to read as follows:
3 "(c) Except as provided in section 667-92(c), no unit
4 owner shall withhold any assessment claimed by the
5 association[-]; provided that a unit owner may withhold payment
6 of legal fees pending a decision in any mediation, arbitration,
7 or court proceeding in which the unit owner has filed for a
8 determination to resolve a dispute about the amount or validity
9 of an assessment claimed by the association, including the
10 reasonableness of the attorney's fees and costs included in the
11 assessment, under the circumstances of the dispute. A unit
12 owner who disputes the amount or validity of an assessment may
13 request a written statement clearly indicating:
14 (1) The amount of regular and special assessments included
15 in the assessment, including the due date of each
16 amount claimed;



- 1 (2) The amount of any penalty, late fee, lien filing fee,
- 2 and any other charge included in the assessment;
- 3 (3) The amount of attorneys' fees and costs, if any,
- 4 included in the assessment;
- 5 (4) That under Hawaii law, a unit owner has no right to
- 6 withhold assessments for any reason~~[r]~~, except for
- 7 legal fees that may be withheld pursuant to this
- 8 subsection;
- 9 (5) That a unit owner has a right to demand mediation to
- 10 resolve disputes about the amount or validity of an
- 11 association's assessment; provided that, except for
- 12 legal fees that may be withheld pursuant to this
- 13 subsection, the unit owner shall immediately [~~pays~~]
- 14 pay the assessment in full and [~~keeps~~] keep
- 15 assessments current; and
- 16 (6) That payment in full of the assessment does not
- 17 prevent the unit owner from contesting the assessment
- 18 or receiving a refund of amounts not owed.
- 19 Nothing in this section shall limit the rights of a unit owner
- 20 to the protection of all fair debt collection procedures
- 21 mandated under federal and state law.



1 (d) A unit owner who pays an association the full amount
2 claimed by the association, or the amount claimed by the
3 association less legal fees that may be withheld pursuant to
4 subsection (c), may file a claim against the association in
5 court, including small claims court, or require the association
6 to mediate under section 421J-13 to resolve any disputes
7 concerning the amount or validity of the association's claim.
8 If the unit owner and the association are unable to resolve the
9 dispute through mediation, either party may file for relief with
10 a court; provided that a unit owner may only file for relief in
11 court if all amounts claimed by the association are paid in full
12 on or before the date of filing[-], except for legal fees that
13 may be withheld pursuant to subsection (c). If the unit owner
14 fails to keep all association assessments current during the
15 court hearing, the association may ask the court to temporarily
16 suspend the proceedings. If the unit owner pays all association
17 assessments within thirty days of the date of suspension, the
18 unit owner may ask the court to recommence the proceedings. If
19 the unit owner fails to pay all association assessments by the
20 end of the thirty-day period, the association may ask the court
21 to dismiss the proceedings. The unit owner shall be entitled to



1 a refund of any amounts paid to the association that are not
2 owed."

3 SECTION 2. Section 514B-146, Hawaii Revised Statutes, is
4 amended by amending subsections (c) and (d) to read as follows:

5 "(c) No unit owner shall withhold any assessment claimed
6 by the association[-]; provided that the unit owner may withhold
7 payment of legal fees pending a decision in any mediation,
8 arbitration, or court proceeding in which the unit owner has
9 filed for a determination to resolve a dispute about the amount
10 or validity of the assessment claimed by the association,
11 including the reasonableness of the attorney's fees and costs
12 included in the assessment, under the circumstances of the
13 dispute. A unit owner who disputes the amount of an assessment
14 may request a written statement clearly indicating:

- 15 (1) The amount of common expenses included in the
16 assessment, including the due date of each amount
17 claimed;
- 18 (2) The amount of any penalty, late fee, lien filing fee,
19 and any other charge included in the assessment;
- 20 (3) The amount of attorneys' fees and costs, if any,
21 included in the assessment;



1 (4) That under Hawaii law, a unit owner has no right to
2 withhold assessments for any reason[?], except for
3 legal fees that may be withheld pursuant to this
4 subsection;

5 (5) That a unit owner has a right to demand mediation or
6 arbitration to resolve disputes about the amount or
7 validity of an association's assessment, provided
8 that, except for legal fees that may be withheld
9 pursuant to this subsection, the unit owner shall
10 immediately [~~pays~~] pay the assessment in full and
11 [~~keeps~~] keep assessments current; and

12 (6) That payment in full of the assessment does not
13 prevent the owner from contesting the assessment or
14 receiving a refund of amounts not owed.

15 Nothing in this section shall limit the rights of an owner to
16 the protection of all fair debt collection procedures mandated
17 under federal and state law.

18 (d) A unit owner who pays an association the full amount
19 claimed by the association, or the amount claimed by the
20 association less legal fees that may be withheld pursuant to
21 subsection (c), may file in small claims court or require the



1 association to mediate to resolve any disputes concerning the
2 amount or validity of the association's claim. If the unit
3 owner and the association are unable to resolve the dispute
4 through mediation, either party may file for arbitration under
5 section 514B-162; provided that a unit owner may only file for
6 arbitration if all amounts claimed by the association are paid
7 in full on or before the date of filing[-], except for legal
8 fees that may be withheld pursuant to subsection (c). If the
9 unit owner fails to keep all association assessments current
10 during the arbitration, the association may ask the arbitrator
11 to temporarily suspend the arbitration proceedings. If the unit
12 owner pays all association assessments within thirty days of the
13 date of suspension, the unit owner may ask the arbitrator to
14 recommence the arbitration proceedings. If the owner fails to
15 pay all association assessments by the end of the thirty-day
16 period, the association may ask the arbitrator to dismiss the
17 arbitration proceedings. The unit owner shall be entitled to a
18 refund of any amounts paid to the association which are not
19 owed."



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

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

6 SECTION 5. This Act shall take effect on July 1, 2112.



Report Title:

Planned Community Associations; Association of Apartment Owners;
Foreclosure; Attorneys' Fees; Assessments

Description:

Allows unit owners in planned community associations and condominium associations to withhold legal fees from assessments claimed by associations pending decision in any mediation, arbitration, or court proceeding in which the owner has filed for a determination of the validity of the amounts and attorney's fees claimed by the association. (HB649 HD1)

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

