

JAN 20 2017

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 the owner may withhold legal fees
6 pending a decision in any arbitration or court proceeding in
7 which the owner has filed for a determination of the validity of
8 the amounts claimed by the association and the reasonableness of
9 the attorney's fees under the circumstances of the dispute. A
10 unit owner who disputes the amount of an assessment may request
11 a written statement clearly indicating:

- 12 (1) The amount of regular and special assessments included
13 in the assessment, including the due date of each
14 amount claimed;
- 15 (2) The amount of any penalty, late fee, lien filing fee,
16 and any other charge included in the assessment;



- 1 (3) The amount of attorneys' fees and costs, if any,
2 included in the assessment;
- 3 (4) That under Hawaii law, a unit owner has no right to
4 withhold assessments for any reason;
- 5 (5) That a unit owner has a right to demand mediation to
6 resolve disputes about the amount or validity of an
7 association's assessment; provided that the unit owner
8 immediately pays the assessment in full and keeps
9 assessments current; and
- 10 (6) That payment in full of the assessment does not
11 prevent the unit owner from contesting the assessment
12 or receiving a refund of amounts not owed.

13 Nothing in this section shall limit the rights of a unit owner
14 to the protection of all fair debt collection procedures
15 mandated under federal and state law.

16 (d) A unit owner who pays an association the full amount
17 claimed by the association, except any legal fees withheld
18 pursuant to subsection (c), may file a claim against the
19 association in court, including small claims court, or require
20 the association to mediate under section 421J-13 to resolve any
21 disputes concerning the amount or validity of the association's



1 claim. If the unit owner and the association are unable to
2 resolve the dispute through mediation, either party may file for
3 relief with a court; provided that a unit owner may only file
4 for relief in court if all amounts claimed by the association
5 are paid in full on or before the date of filing. If the unit
6 owner fails to keep all association assessments current during
7 the court hearing, the association may ask the court to
8 temporarily suspend the proceedings. If the unit owner pays all
9 association assessments within thirty days of the date of
10 suspension, the unit owner may ask the court to recommence the
11 proceedings. If the unit owner fails to pay all association
12 assessments by the end of the thirty-day period, the association
13 may ask the court to dismiss the proceedings. The unit owner
14 shall be entitled to a refund of any amounts paid to the
15 association that are not owed."

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

18 "(c) No unit owner shall withhold any assessment claimed
19 by the association[-]; provided that the owner may withhold
20 legal fees pending a decision in any arbitration or court
21 proceeding in which the owner has filed for a determination of



1 the validity of the amount claimed by the association and the
2 reasonableness of the attorney's fees under the circumstances of
3 the dispute. A unit owner who disputes the amount of an
4 assessment may request a written statement clearly indicating:

- 5 (1) The amount of common expenses included in the
6 assessment, including the due date of each amount
7 claimed;
- 8 (2) The amount of any penalty, late fee, lien filing fee,
9 and any other charge included in the assessment;
- 10 (3) The amount of attorneys' fees and costs, if any,
11 included in the assessment;
- 12 (4) That under Hawaii law, a unit owner has no right to
13 withhold assessments for any reason;
- 14 (5) That a unit owner has a right to demand mediation or
15 arbitration to resolve disputes about the amount or
16 validity of an association's assessment, provided the
17 unit owner immediately pays the assessment in full and
18 keeps assessments current; and
- 19 (6) That payment in full of the assessment does not
20 prevent the owner from contesting the assessment or
21 receiving a refund of amounts not owed.



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

4 (d) A unit owner who pays an association the full amount
5 claimed by the association, except any legal fees withheld
6 pursuant to subsection (c), may file in small claims court or
7 require the association to mediate to resolve any disputes
8 concerning the amount or validity of the association's claim.
9 If the unit owner and the association are unable to resolve the
10 dispute through mediation, either party may file for arbitration
11 under section 514B-162; provided that a unit owner may only file
12 for arbitration if all amounts claimed by the association are
13 paid in full on or before the date of filing. If the unit owner
14 fails to keep all association assessments current during the
15 arbitration, the association may ask the arbitrator to
16 temporarily suspend the arbitration proceedings. If the unit
17 owner pays all association assessments within thirty days of the
18 date of suspension, the unit owner may ask the arbitrator to
19 recommence the arbitration proceedings. If the owner fails to
20 pay all association assessments by the end of the thirty-day
21 period, the association may ask the arbitrator to dismiss the



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1 arbitration proceedings. The unit owner shall be entitled to a
2 refund of any amounts paid to the association which are not
3 owed."

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

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

9 SECTION 5. This Act shall take effect upon its approval.

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INTRODUCED BY:

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S.B. NO. 164

Report Title:

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

Description:

Allows unit owners in planned community associations and homeowners associations to withhold legal fees from assessments claimed by associations pending decision in an 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.

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

