
A BILL FOR AN ACT

RELATING TO CONDOMINIUM ASSOCIATIONS.

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

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PART I

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SECTION 1. The legislature finds that it is important to

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have clear and effective rules related to association

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foreclosures on condominiums, including which actions

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successfully cure a default. The legislature further finds that

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a condominium owner and an association agreeing to a payment

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plan is not sufficient to cure a default. Rather, agreeing to a

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payment plan and paying the delinquency in full is required for

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a unit owner to cure a nonjudicial foreclosure on a condominium.

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The legislature further finds that existing law requires

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condominium owners to pay all assessments claimed by an

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association first, prior to initiating a dispute over

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assessments. The legislature additionally finds that preserving

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this pay first, dispute later provision as it applies to common

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expense assessments is important. However, encouraging the use

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of mediation for all other penalties or fines, late fees, lien



1 filing fees, or other charges in an assessment will be
2 beneficial to condominium owners and associations.

3 Accordingly, the purpose of parts II through IV of this Act
4 is to:

5 (1) Clarify that an association does not have to rescind
6 the notice of default and intention to foreclose or
7 restart the foreclosure by filing a new notice of
8 default and intent to foreclose if a unit owner
9 defaults on a payment plan to cure a nonjudicial
10 foreclosure agreed to by the parties;

11 (2) Specify that if a unit owner and an association have
12 agreed on a payment plan to prevent a nonjudicial
13 foreclosure from proceeding, any association fines
14 imposed while the payment plan is in effect shall not
15 be deemed a default under the payment plan;

16 (3) Clarify the obligations of a unit owner and an
17 association while a unit owner is not otherwise in
18 default under a payment plan;

19 (4) Clarify that the pay first, dispute later provisions
20 in Hawaii's condominium law apply only to common



1 expense assessments claimed by an association of
 2 apartment owners;

3 (5) Specify that a unit or apartment owner who disputes
 4 the amount of an assessment may request a written
 5 statement about the assessment from the association,
 6 including that a unit or apartment owner may demand
 7 mediation prior to paying contested charges, other
 8 than common expense assessments;

9 (6) Specify requirements for mediation on contested
 10 charges, except for common expense assessments;

11 (7) Repeal language that permitted associations to convert
 12 delinquent fines and late fees into delinquent
 13 maintenance fees, if certain conditions were met; and

14 (8) Make conforming amendments.

15 **PART II**

16 SECTION 2. Section 667-94, Hawaii Revised Statutes, is
 17 amended to read as follows:

18 "[~~H~~]§667-94[~~}]~~ **Cure of default.** (a) If the default is
 19 cured as required by the notice of default and intention to
 20 foreclose [~~, or if the parties have agreed on a payment plan~~],
 21 the association shall rescind the notice of default and



1 intention to foreclose. If, pursuant to section 667-19, the
2 parties agree on a payment plan to cure the default, the notice
3 of default and intention to foreclose shall be put on hold until
4 the payment plan is completed. Within fourteen days of the date
5 of the cure or an agreement on a payment plan, the association
6 shall so notify any person who was served with the notice of
7 default and intention to foreclose. If the default is cured, or
8 the payment plan is completed according to its terms, and the
9 notice of default and intention to foreclose was recorded, a
10 release of the notice of default and intention to foreclose
11 shall be recorded.

12 (b) If the default is not cured as required by the notice
13 of default and intention to foreclose, [~~or~~] the parties have not
14 agreed on a payment plan, or the parties have agreed on a
15 payment plan but a default occurs under the payment plan, the
16 association, without filing a court action and without going to
17 court, may foreclose the association's lien under power of sale
18 to sell the unit at a public sale.

19 (c) If the parties have agreed on a payment plan to
20 prevent a foreclosure from proceeding, any unpaid fines the
21 association imposes on the unit owner while the payment plan is



1 in effect shall not be deemed a default under the payment plan.

2 As long as the unit owner is not otherwise in default under the
3 payment plan, the:

4 (1) Association shall notify the unit owner in writing of
5 the right to mediation;

6 (2) Fines and any attorneys' fees incurred with respect to
7 such fines shall not be deducted from the unit owner's
8 payments pursuant to the payment plan; and

9 (3) Parties shall attempt to resolve a dispute over fines
10 and attorneys' fees, if any, through mediation, within
11 thirty days of the association's written notice.

12 If the unit owner refuses to participate in mediation or
13 defaults under the payment plan, or the parties are unable to
14 resolve the dispute through mediation, the association may then
15 commence foreclosure proceedings."

16 **PART III**

17 SECTION 3. Section 514A-90, Hawaii Revised Statutes, is
18 amended to read as follows:

19 **"§514A-90 Priority of lien.** (a) All sums assessed by the
20 association of apartment owners but unpaid for the share of the



1 common expenses chargeable to any apartment constitute a lien on
2 the apartment prior to all other liens, except:

3 (1) Liens for taxes and assessments lawfully imposed by
4 governmental authority against the apartment; and

5 (2) All sums unpaid on any mortgage of record that was
6 recorded prior to the recordation of notice of a lien
7 by the association of apartment owners, and costs and
8 expenses including attorneys' fees provided in such
9 mortgages;

10 provided that a lien recorded by an association of apartment
11 owners for unpaid assessments shall expire six years from the
12 date of recordation unless proceedings to enforce the lien are
13 instituted prior to the expiration of the lien; provided further
14 that the expiration of a recorded lien shall in no way affect
15 the association of apartment owners' automatic lien that arises
16 pursuant to this subsection or the declaration or bylaws. Any
17 proceedings to enforce an association of apartment owners' lien
18 for any assessment shall be instituted within six years after
19 the assessment became due; provided that if the owner of an
20 apartment subject to a lien of the association of apartment
21 owners files a petition for relief under the United States



1 Bankruptcy Code (11 U.S.C. §101 et seq.), the period of time for
2 instituting proceedings to enforce the association of apartment
3 owners' lien shall be tolled until thirty days after the
4 automatic stay of proceedings under section 362 of the United
5 States Bankruptcy Code (11 U.S.C. §362) is lifted.

6 The lien of the association of apartment owners may be
7 foreclosed by action or by nonjudicial or power of sale
8 foreclosure procedures set forth in chapter 667, by the managing
9 agent or board of directors, acting on behalf of the association
10 of apartment owners and in the name of the association of
11 apartment owners; provided that no association of apartment
12 owners may exercise the nonjudicial or power of sale remedies
13 provided in chapter 667 to foreclose a lien against any
14 apartment that arises solely from fines, penalties, legal fees,
15 or late fees, and the foreclosure of any such lien shall be
16 filed in court pursuant to part IA of chapter 667.

17 In any such foreclosure, the apartment owner shall be
18 required to pay a reasonable rental for the apartment, if so
19 provided in the bylaws or the law, and the plaintiff in the
20 foreclosure shall be entitled to the appointment of a receiver to
21 collect the rental owed by the apartment owner or any tenant of



1 the apartment. If the association of apartment owners is the
2 plaintiff, it may request that its managing agent be appointed as
3 receiver to collect the rent from the tenant. The managing agent
4 or board of directors, acting on behalf of the association of
5 apartment owners and in the name of the association of apartment
6 owners, unless prohibited by the declaration, may bid on the
7 apartment at foreclosure sale, and acquire and hold, lease,
8 mortgage, and convey the apartment. Action to recover a money
9 judgment for unpaid common expenses shall be maintainable without
10 foreclosing or waiving the lien securing the unpaid common
11 expenses owed.

12 (b) Except as provided in subsection [~~(g)~~] (j), when the
13 mortgagee of a mortgage of record or other purchaser of an
14 apartment obtains title to the apartment as a result of
15 foreclosure of the mortgage, the acquirer of title and the
16 acquirer's successors and assigns shall not be liable for the
17 share of the common expenses or assessments by the association of
18 apartment owners chargeable to the apartment that became due prior
19 to the acquisition of title to the apartment by the acquirer. The
20 unpaid share of common expenses or assessments shall be deemed to
21 be common expenses collectible from all of the apartment owners,



1 including the acquirer and the acquirer's successors and assigns.
2 The mortgagee of record or other purchaser of the apartment shall
3 be deemed to acquire title and shall be required to pay the
4 apartment's share of common expenses and assessments beginning:

5 (1) Thirty-six days after the order confirming the sale to
6 the purchaser has been filed with the court;

7 (2) Sixty days after the hearing at which the court grants
8 the motion to confirm the sale to the purchaser;

9 (3) Thirty days after the public sale in a nonjudicial
10 power of sale foreclosure conducted pursuant to
11 chapter 667; or

12 (4) Upon the recording of the instrument of conveyance,
13 whichever occurs first; provided that the mortgagee of record or
14 other purchaser of the apartment shall not be deemed to acquire
15 title under paragraph (1), (2), or (3), if transfer of title is
16 delayed past the thirty-six days specified in paragraph (1), the
17 sixty days specified in paragraph (2), or the thirty days
18 specified in paragraph (3), when a person who appears at the
19 hearing on the motion or a party to the foreclosure action
20 requests reconsideration of the motion or order to confirm sale,
21 objects to the form of the proposed order to confirm sale,



1 appeals the decision of the court to grant the motion to confirm
2 sale, or the debtor or mortgagor declares bankruptcy or is
3 involuntarily placed into bankruptcy. In any such case, the
4 mortgagee of record or other purchaser of the apartment shall be
5 deemed to acquire title upon recordation of the instrument of
6 conveyance.

7 (c) ~~[No apartment owner shall withhold any assessment~~
8 ~~claimed by the association.]~~ An apartment owner who receives a
9 demand for payment from an association and disputes the amount
10 of an assessment may request a written statement clearly
11 indicating:

12 (1) The amount of common expenses included in the
13 assessment, including the due date of each amount
14 claimed;

15 (2) The amount of any penalty~~[]~~ or fine, late fee, lien
16 filing fee, and any other charge included in the
17 assessment~~[]~~ that is not imposed on all apartment
18 owners as a common expense; and

19 (3) The amount of attorneys' fees and costs, if any,
20 included in the assessment~~[]~~.



1 (d) An apartment owner who disputes the information in the
2 written statement received from the association pursuant to
3 subsection (c) may request a subsequent written statement that
4 additionally informs the apartment owner that:

5 [~~(4) That under~~] (1) Under Hawaii law, an apartment owner
6 has no right to withhold common expense assessments
7 for any reason;

8 [~~(5) That an~~] (2) An apartment owner has a right to demand
9 mediation or arbitration to resolve disputes about the
10 amount or validity of an association's common expense
11 assessment; provided that the apartment owner
12 immediately pays the common expense assessment in full
13 and keeps common expense assessments current; [~~and~~

14 [~~(6) That payment~~] (3) Payment in full of the common
15 expense assessment shall not prevent the owner from
16 contesting the common expense assessment or receiving
17 a refund of amounts not owed~~[,]~~; and

18 (4) If the apartment owner contests any penalty or fine,
19 late fee, lien filing fee, or other charges included
20 in the assessment, except common expense assessments,



1 the apartment owner may demand mediation as provided
2 in subsection (g) prior to paying those charges.

3 (e) No apartment owner shall withhold any common expense
4 assessment claimed by the association. Nothing in this section
5 shall limit the rights of an owner to the protection of all fair
6 debt collection procedures mandated under federal and state law.

7 ~~[(d)]~~ (f) An apartment owner who pays an association the
8 full amount of the common expenses claimed by the association
9 may file in small claims court or require the association to
10 mediate to resolve any disputes concerning the amount or
11 validity of the association's common expense claim. If the
12 apartment owner and the association are unable to resolve the
13 dispute through mediation, either party may file for arbitration
14 under part VII; provided that an apartment owner may only file
15 for arbitration if all amounts claimed by the association as
16 common expenses are paid in full on or before the date of
17 filing. If the apartment owner fails to keep all association
18 common expense assessments current during the arbitration, the
19 association may ask the arbitrator to temporarily suspend the
20 arbitration proceedings. If the apartment owner pays all
21 association common expense assessments within thirty days of the



1 date of suspension, the apartment owner may ask the arbitrator
2 to recommence the arbitration proceedings. If the owner fails
3 to pay all association common expense assessments by the end of
4 the thirty-day period, the association may ask the arbitrator to
5 dismiss the arbitration proceedings. The apartment owner shall
6 be entitled to a refund of any amounts paid to the association
7 [which] as common expenses that are not owed.

8 (g) An apartment owner who contests the amount of any
9 attorneys' fees and costs, penalties or fines, late fees, lien
10 filing fees, or any other charges, except common expense
11 assessments, may demand mediation on the validity of those other
12 charges. The apartment owner has thirty days from the date of
13 the written statement to file demand for mediation on the
14 disputed charges, other than common expense assessments. If the
15 apartment owner fails to file for mediation within thirty days
16 of the date of the written statement, the association may
17 proceed with collection of the other charges. If the apartment
18 owner makes a request for mediation within thirty days, the
19 association shall be prohibited from attempting to collect any
20 of the disputed charges until the association has participated
21 in the mediation. The mediation shall be completed within sixty



1 days of the apartment owner's request for mediation; provided
2 that if the mediation is not completed within sixty days or the
3 parties are unable to resolve the dispute by mediation, the
4 association may proceed with collection of all amounts due from
5 the owner for attorneys' fees and costs, penalties or fines,
6 late fees, lien filing fees, or any other charge that is not
7 imposed on all apartment owners as a common expense.

8 ~~[(e)]~~ (h) As an alternative to foreclosure proceedings under
9 subsection (a), where an apartment is owner-occupied, the
10 association of apartment owners may authorize its managing agent
11 or board of directors to, after sixty days' written notice to the
12 apartment owner and to the apartment's first mortgagee of the
13 nonpayment of the apartment's share of the common expenses,
14 terminate the delinquent apartment's access to the common elements
15 and cease supplying a delinquent apartment with any and all
16 services normally supplied or paid for by the association of
17 apartment owners. Any terminated services and privileges shall be
18 restored upon payment of all delinquent assessments.

19 ~~[(f)]~~ (i) Before the board of directors or managing agent
20 may take the actions permitted under subsection ~~[(e)],~~ (h), the
21 board shall adopt a written policy providing for such actions



1 and have the policy approved by a majority vote of the apartment
2 owners at an annual or special meeting of the association or by
3 the written consent of a majority of the apartment owners.

4 ~~[(g)]~~ (j) Subject to this subsection, and subsections
5 ~~[(h)]~~ (k) and ~~[(i)]~~, (l), the board of an association of
6 apartment owners may specially assess the amount of the unpaid
7 regular monthly common assessments for common area expenses
8 against a person who, in a judicial or nonjudicial power of sale
9 foreclosure, purchases a delinquent apartment; provided that:

10 (1) A purchaser who holds a mortgage on a delinquent
11 apartment that was recorded prior to the filing of a
12 notice of lien by the association of apartment owners
13 and who acquires the delinquent apartment through a
14 judicial or nonjudicial foreclosure proceeding,
15 including purchasing the delinquent apartment at a
16 foreclosure auction, shall not be obligated to make,
17 nor be liable for, payment of the special assessment
18 as provided for under this subsection; and

19 (2) A person who subsequently purchases the delinquent
20 apartment from the mortgagee referred to in paragraph
21 (1) shall be obligated to make, and shall be liable



1 for, payment of the special assessment provided for
2 under this subsection; provided that the mortgagee or
3 subsequent purchaser may require the association of
4 apartment owners to provide at no charge a notice of
5 the association's intent to claim a lien against the
6 delinquent apartment for the amount of the special
7 assessment, prior to the subsequent purchaser's
8 acquisition of title to the delinquent apartment. The
9 notice shall state the amount of the special
10 assessment, how that amount was calculated, and the
11 legal description of the apartment.

12 [~~h~~] (k) The amount of the special assessment assessed
13 under subsection [~~g~~] (j) shall not exceed the total amount of
14 unpaid regular monthly common assessments that were assessed
15 during the six months immediately preceding the completion of
16 the judicial or nonjudicial power of sale foreclosure.

17 [~~i~~] (l) For purposes of subsections [~~g~~] (j) and [~~h~~],
18 (k), the following definitions shall apply:

19 "Completion" means:



1 (1) In a nonjudicial power of sale foreclosure, when
2 the affidavit after public sale is recorded
3 pursuant to section 667-33; and

4 (2) In a judicial foreclosure, when a purchaser is
5 deemed to acquire title pursuant to subsection
6 (b).

7 "Regular monthly common assessments" shall not include:

8 (1) Any other special assessment, except for a special
9 assessment imposed on all apartments as part of a
10 budget adopted pursuant to section 514A-83.6;

11 (2) Late charges, fines, or penalties;

12 (3) Interest assessed by the association of apartment
13 owners;

14 (4) Any lien arising out of the assessment; or

15 (5) Any fees or costs related to the collection or
16 enforcement of the assessment, including attorneys'
17 fees and court costs."

18 SECTION 4. Section 514B-105, Hawaii Revised Statutes, is
19 amended to read as follows:

20 "§514B-105 Association; limitations on powers. (a) The
21 declaration and bylaws may not impose limitations on the power



1 of the association to deal with the developer which are more
2 restrictive than the limitations imposed on the power of the
3 association to deal with other persons.

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

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

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

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

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



1 ~~[(c) No association shall deduct and apply portions of~~
2 ~~common expense payments received from a unit owner to unpaid~~
3 ~~late fees, legal fees, fines, and interest (other than amounts~~
4 ~~remitted by a unit in payment of late fees, legal fees, fines,~~
5 ~~and interest) unless the board adopts and distributes to all~~
6 ~~owners a policy stating that:~~

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

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

16 ~~(d)]~~ (c) No unit owner who requests legal or other
17 information from the association, the board, the managing agent,
18 or their employees or agents, shall be charged for the
19 reasonable cost of providing the information unless the
20 association notifies the unit owner that it intends to charge
21 the unit owner for the reasonable cost. The association shall



1 notify the unit owner in writing at least ten days prior to
2 incurring the reasonable cost of providing the information,
3 except that no prior notice shall be required to assess the
4 reasonable cost of providing information on delinquent
5 assessments or in connection with proceedings to enforce the law
6 or the association's governing documents.

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

12 [~~e~~] (d) Subject to any approval requirements and
13 spending limits contained in the declaration or bylaws, the
14 association may authorize the board to borrow money for the
15 repair, replacement, maintenance, operation, or administration
16 of the common elements and personal property of the project, or
17 the making of any additions, alterations, and improvements
18 thereto; provided that written notice of the purpose and use of
19 the funds is first sent to all unit owners and owners
20 representing fifty per cent of the common interest vote or give
21 written consent to the borrowing. In connection with the



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

14 SECTION 5. Section 514B-146, Hawaii Revised Statutes, is
15 amended to read as follows:

16 **"§514B-146 Association fiscal matters; lien for**
17 **assessments.** (a) All sums assessed by the association but
18 unpaid for the share of the common expenses chargeable to any
19 unit shall constitute a lien on the unit with priority over all
20 other liens, except:



1 (1) Liens for real property taxes and assessments lawfully
2 imposed by governmental authority against the unit;
3 and
4 (2) Except as provided in subsection [~~(g)~~] (j), all sums
5 unpaid on any mortgage of record that was recorded
6 prior to the recordation of a notice of a lien by the
7 association, and costs and expenses including
8 attorneys' fees provided in such mortgages;
9 provided that a lien recorded by an association for unpaid
10 assessments shall expire six years from the date of recordation
11 unless proceedings to enforce the lien are instituted prior to
12 the expiration of the lien; provided further that the expiration
13 of a recorded lien shall in no way affect the association's
14 automatic lien that arises pursuant to this subsection or the
15 declaration or bylaws. Any proceedings to enforce an
16 association's lien for any assessment shall be instituted within
17 six years after the assessment became due; provided that if the
18 owner of a unit subject to a lien of the association files a
19 petition for relief under the United States Bankruptcy Code (11
20 U.S.C. §101 et seq.), the period of time for instituting
21 proceedings to enforce the association's lien shall be tolled



1 until thirty days after the automatic stay of proceedings under
2 section 362 of the United States Bankruptcy Code (11 U.S.C.
3 §362) is lifted.

4 The lien of the association may be foreclosed by action or
5 by nonjudicial or power of sale foreclosure procedures set forth
6 in chapter 667, by the managing agent or board, acting on behalf
7 of the association and in the name of the association; provided
8 that no association may exercise the nonjudicial or power of
9 sale remedies provided in chapter 667 to foreclose a lien
10 against any unit that arises solely from fines, penalties, legal
11 fees, or late fees, and the foreclosure of any such lien shall
12 be filed in court pursuant to part IA of chapter 667.

13 In any such foreclosure, the unit owner shall be required
14 to pay a reasonable rental for the unit, if so provided in the
15 bylaws or the law, and the plaintiff in the foreclosure shall be
16 entitled to the appointment of a receiver to collect the rental
17 owed by the unit owner or any tenant of the unit. If the
18 association is the plaintiff, it may request that its managing
19 agent be appointed as receiver to collect the rent from the
20 tenant. The managing agent or board, acting on behalf of the
21 association and in the name of the association, unless



1 prohibited by the declaration, may bid on the unit at
2 foreclosure sale, and acquire and hold, lease, mortgage, and
3 convey the unit. Action to recover a money judgment for unpaid
4 common expenses shall be maintainable without foreclosing or
5 waiving the lien securing the unpaid common expenses owed.

6 (b) Except as provided in subsection [~~(g)~~] (j), when the
7 mortgagee of a mortgage of record or other purchaser of a unit
8 obtains title to the unit as a result of foreclosure of the
9 mortgage, the acquirer of title and the acquirer's successors
10 and assigns shall not be liable for the share of the common
11 expenses or assessments by the association chargeable to the
12 unit that became due prior to the acquisition of title to the
13 unit by the acquirer. The unpaid share of common expenses or
14 assessments shall be deemed to be common expenses collectible
15 from all of the unit owners, including the acquirer and the
16 acquirer's successors and assigns. The mortgagee of record or
17 other purchaser of the unit shall be deemed to acquire title and
18 shall be required to pay the unit's share of common expenses and
19 assessments beginning:

20 (1) Thirty-six days after the order confirming the sale to
21 the purchaser has been filed with the court;



1 (2) Sixty days after the hearing at which the court grants
2 the motion to confirm the sale to the purchaser;

3 (3) Thirty days after the public sale in a nonjudicial
4 power of sale foreclosure conducted pursuant to
5 chapter 667; or

6 (4) Upon the recording of the instrument of conveyance;
7 whichever occurs first; provided that the mortgagee of record or
8 other purchaser of the unit shall not be deemed to acquire title
9 under paragraph (1), (2), or (3), if transfer of title is
10 delayed past the thirty-six days specified in paragraph (1), the
11 sixty days specified in paragraph (2), or the thirty days
12 specified in paragraph (3), when a person who appears at the
13 hearing on the motion or a party to the foreclosure action
14 requests reconsideration of the motion or order to confirm sale,
15 objects to the form of the proposed order to confirm sale,
16 appeals the decision of the court to grant the motion to confirm
17 sale, or the debtor or mortgagor declares bankruptcy or is
18 involuntarily placed into bankruptcy. In any such case, the
19 mortgagee of record or other purchaser of the unit shall be
20 deemed to acquire title upon recordation of the instrument of
21 conveyance.



1 (c) ~~[No unit owner shall withhold any assessment claimed~~
2 ~~by the association.]~~ A unit owner who received a demand for
3 payment from an association and 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~~[,]~~ or fine, late fee, lien
9 filing fee, and any other charge included in the
10 assessment~~[,]~~ that is not imposed on all unit owners
11 as a common expense; and

12 (3) The amount of attorneys' fees and costs, if any,
13 included in the assessment~~[,]~~.

14 (d) A unit owner who disputes the information in the
15 written statement received from the association pursuant to
16 subsection (c) may request a subsequent written statement that
17 additionally informs the unit owner that:

18 ~~[-(4) That under]~~ (1) Under Hawaii law, a unit owner has no
19 right to withhold common expense assessments for any
20 reason;



1 ~~[-5- That a]~~ (2) A unit owner has a right to demand
2 mediation or arbitration to resolve disputes about the
3 amount or validity of an association's common expense
4 assessment~~[-]~~; provided that the unit owner
5 immediately pays the common expense assessment in full
6 and keeps common expense assessments current; ~~[and~~
7 ~~[-6- That payment]~~ (3) Payment in full of the common
8 expense assessment [does] shall not prevent the owner
9 from contesting the common expense assessment or
10 receiving a refund of amounts not owed~~[-]~~; and
11 (4) If the unit owner contests any penalty or fine, late
12 fee, lien filing fee, or other charges included in the
13 assessment, except common expense assessments, the
14 unit owner may demand mediation as provided in
15 subsection (g) prior to paying those charges.
16 (e) No unit owner shall withhold any common expense
17 assessment claimed by the association. Nothing in this section
18 shall limit the rights of an owner to the protection of all fair
19 debt collection procedures mandated under federal and state law.
20 ~~[-d-]~~ (f) A unit owner who pays an association the full
21 amount of the common expenses claimed by the association may



1 file in small claims court or require the association to mediate
2 to resolve any disputes concerning the amount or validity of the
3 association's common expense claim. If the unit owner and the
4 association are unable to resolve the dispute through mediation,
5 either party may file for arbitration under section 514B-162;
6 provided that a unit owner may only file for arbitration if all
7 amounts claimed by the association as common expenses are paid
8 in full on or before the date of filing. If the unit owner
9 fails to keep all association common expense 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 common expense assessments within
13 thirty days of the date of suspension, the unit owner may ask
14 the arbitrator to recommence the arbitration proceedings. If
15 the owner fails to pay all association common expense
16 assessments by the end of the thirty-day period, the association
17 may ask the arbitrator to dismiss the arbitration proceedings.
18 The unit owner shall be entitled to a refund of any amounts paid
19 as common expenses to the association [~~which~~] that are not owed.

20 (g) A unit owner who contests the amount of any attorneys'
21 fees and costs, penalties or fines, late fees, lien filing fees,



1 or any other charges, except common expense assessments, may
2 demand mediation on the validity of those other charges. The
3 unit owner has thirty days from the date of the written
4 statement to file demand for mediation on the disputed charges,
5 other than common expense assessments. If the unit owner fails
6 to file for mediation within thirty days of the date of the
7 written statement, the association may proceed with collection
8 of the other charges. If the unit owner makes a request for
9 mediation within thirty days, the association shall be
10 prohibited from attempting to collect any of the disputed
11 charges until the association has participated in the mediation.
12 The mediation shall be completed within sixty days of the unit
13 owner's request for mediation; provided that if the mediation is
14 not completed within sixty days or the parties are unable to
15 resolve the dispute by mediation, the association may proceed
16 with collection of all amounts due from the owner for attorneys'
17 fees and costs, penalties or fines, late fees, lien filing fees,
18 or any other charge that is not imposed on all unit owners as a
19 common expense.

20 [-(e)] (h) In conjunction with or as an alternative to
21 foreclosure proceedings under subsection (a), where a unit is



1 owner-occupied, the association may authorize its managing agent
2 or board to, after sixty days' written notice to the unit owner
3 and to the unit's first mortgagee of the nonpayment of the
4 unit's share of the common expenses, terminate the delinquent
5 unit's access to the common elements and cease supplying a
6 delinquent unit with any and all services normally supplied or
7 paid for by the association. Any terminated services and
8 privileges shall be restored upon payment of all delinquent
9 assessments but need not be restored until payment in full is
10 received.

11 ~~[(f)]~~ (i) Before the board or managing agent may take the
12 actions permitted under subsection ~~[(e)]~~, (h), the board shall
13 adopt a written policy providing for such actions and have the
14 policy approved by a majority vote of the unit owners at an
15 annual or special meeting of the association or by the written
16 consent of a majority of the unit owners.

17 ~~[(g)]~~ (j) Subject to this subsection, and subsections
18 ~~[(h)]~~ (k) and ~~[(i)]~~, (l), the board may specially assess the
19 amount of the unpaid regular monthly common assessments for
20 common expenses against a mortgagee or other purchaser who, in a
21 judicial or nonjudicial power of sale foreclosure, purchases a



1 delinquent unit; provided that the mortgagee or other purchaser
2 may require the association to provide at no charge a notice of
3 the association's intent to claim lien against the delinquent
4 unit for the amount of the special assessment, prior to the
5 subsequent purchaser's acquisition of title to the delinquent
6 unit. The notice shall state the amount of the special
7 assessment, how that amount was calculated, and the legal
8 description of the unit.

9 ~~[(h)]~~ (k) The amount of the special assessment assessed
10 under subsection ~~[(g)]~~ (j) shall not exceed the total amount of
11 unpaid regular monthly common assessments that were assessed
12 during the six months immediately preceding the completion of
13 the judicial or nonjudicial power of sale foreclosure.

14 ~~[(i)]~~ (1) For purposes of subsections ~~[(g)]~~ (j) and ~~[(h)],~~
15 (k), the following definitions shall apply, unless the context
16 requires otherwise:

17 "Completion" means:

18 (1) In a nonjudicial power of sale foreclosure, when the
19 affidavit after public sale is recorded pursuant to
20 section 667-33; and



1 (2) In a judicial foreclosure, when a purchaser is deemed
2 to acquire title pursuant to subsection (b).

3 "Regular monthly common assessments" does not include:

4 (1) Any other special assessment, except for a special
5 assessment imposed on all units as part of a budget
6 adopted pursuant to section 514B-148;

7 (2) Late charges, fines, or penalties;

8 (3) Interest assessed by the association;

9 (4) Any lien arising out of the assessment; or

10 (5) Any fees or costs related to the collection or
11 enforcement of the assessment, including attorneys'
12 fees and court costs.

13 [~~(j)~~] (m) The cost of a release of any lien filed pursuant
14 to this section shall be paid by the party requesting the
15 release.

16 [~~(k)~~] (n) After any judicial or nonjudicial foreclosure
17 proceeding in which the association acquires title to the unit,
18 any excess rental income received by the association from the
19 unit shall be paid to existing lien holders based on the
20 priority of lien, and not on a pro rata basis, and shall be
21 applied to the benefit of the unit owner. For purposes of this



1 subsection, excess rental income shall be any net income
2 received by the association after a court has issued a final
3 judgment determining the priority of a senior mortgagee and
4 after paying, crediting, or reimbursing the association or a
5 third party for:

- 6 (1) The lien for delinquent assessments pursuant to
7 subsections (a) and (b);
- 8 (2) Any maintenance fee delinquency against the unit;
- 9 (3) Attorney's fees and other collection costs related to
10 the association's foreclosure of the unit; or
- 11 (4) Any costs incurred by the association for the rental,
12 repair, maintenance, or rehabilitation of the unit
13 while the association is in possession of the unit
14 including monthly association maintenance fees,
15 management fees, real estate commissions, cleaning and
16 repair expenses for the unit, and general excise taxes
17 paid on rental income;

18 provided that the lien for delinquent assessments under
19 paragraph (1) shall be paid, credited, or reimbursed first."

20 SECTION 6. Section 514A-15.1, Hawaii Revised Statutes, is
21 repealed.



- 1 (1) The real estate commission;
- 2 (2) The mortgagee of a mortgage of record;
- 3 (3) The developer, general contractor, subcontractors, or
- 4 design professionals for the project; provided that
- 5 when any person exempted by this paragraph is also an
- 6 apartment owner, a director, or managing agent, such
- 7 person shall, in those capacities, be subject to the
- 8 provisions of subsection (a);
- 9 (4) Actions seeking equitable relief involving threatened
- 10 property damage or the health or safety of apartment
- 11 owners or any other person;
- 12 (5) Actions to collect assessments that are liens or
- 13 subject to foreclosure; provided that an apartment
- 14 owner who pays the full amount of an assessment and
- 15 fulfills the requirements of section [~~514A-90(d)~~]
- 16 514A-90(f) shall have the right to demand arbitration
- 17 of the owner's dispute, including a dispute about the
- 18 amount and validity of the assessment;
- 19 (6) Personal injury claims;
- 20 (7) Actions for amounts in excess of \$2,500 against an
- 21 association of apartment owners, a board of directors,



1 or one or more directors, officers, agents, employees,
2 or other persons, if insurance coverage under a policy
3 or policies procured by the association of apartment
4 owners or its board of directors would be unavailable
5 because action by arbitration was pursued; or
6 (8) Any other cases which are determined, as provided in
7 section 514A-122, to be unsuitable for disposition by
8 arbitration."

9 SECTION 9. Section 514B-104, Hawaii Revised Statutes, is
10 amended by amending subsection (a) to read as follows:

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

14 (1) Adopt and amend the declaration, bylaws, and rules and
15 regulations;

16 (2) Adopt and amend budgets for revenues, expenditures,
17 and reserves and collect assessments for common
18 expenses from unit owners, subject to section
19 514B-148;

20 (3) Hire and discharge managing agents and other
21 independent contractors, agents, and employees;



- 1 (4) Institute, defend, or intervene in litigation or
2 administrative proceedings in its own name on behalf
3 of itself or two or more unit owners on matters
4 affecting the condominium. For the purposes of
5 actions under chapter 480, associations shall be
6 deemed to be "consumers";
- 7 (5) Make contracts and incur liabilities;
- 8 (6) Regulate the use, maintenance, repair, replacement,
9 and modification of common elements;
- 10 (7) Cause additional improvements to be made as a part of
11 the common elements;
- 12 (8) Acquire, hold, encumber, and convey in its own name
13 any right, title, or interest to real or personal
14 property; provided that:
- 15 (A) Designation of additional areas to be common
16 elements or subject to common expenses after the
17 initial filing of the declaration or bylaws shall
18 require the approval of at least sixty-seven per
19 cent of the unit owners;
- 20 (B) If the developer discloses to the initial buyer
21 in writing that additional areas will be



- 1 designated as common elements whether pursuant to
2 an incremental or phased project or otherwise,
3 the requirements of this paragraph shall not
4 apply as to those additional areas; and
- 5 (C) The requirements of this paragraph shall not
6 apply to the purchase of a unit for a resident
7 manager, which may be purchased with the approval
8 of the board;
- 9 (9) Subject to section 514B-38, grant easements, leases,
10 licenses, and concessions through or over the common
11 elements and permit encroachments on the common
12 elements;
- 13 (10) Impose and receive any payments, fees, or charges for
14 the use, rental, or operation of the common elements,
15 other than limited common elements described in
16 section 514B-35(2) and (4), and for services provided
17 to unit owners;
- 18 (11) Impose charges and penalties, including late fees and
19 interest, for late payment of assessments and levy
20 reasonable fines for violations of the declaration,
21 bylaws, rules, and regulations of the association,



- 1 either in accordance with the bylaws or, if the bylaws
2 are silent, pursuant to a resolution adopted by the
3 board that establishes a fining procedure that states
4 the basis for the fine and allows an appeal to the
5 board of the fine with notice and an opportunity to be
6 heard and providing that if the fine is paid, the unit
7 owner shall have the right to initiate a dispute
8 resolution process as provided by sections 514B-161,
9 514B-162, or by filing a request for an administrative
10 hearing under a pilot program administered by the
11 department of commerce and consumer affairs;
- 12 (12) Impose reasonable charges for the preparation and
13 recordation of amendments to the declaration,
14 documents requested for resale of units, or statements
15 of unpaid assessments;
- 16 (13) Provide for cumulative voting through a provision in
17 the bylaws;
- 18 (14) Provide for the indemnification of its officers,
19 board, committee members, and agents, and maintain
20 directors' and officers' liability insurance;



- 1 (15) Assign its right to future income, including the right
2 to receive common expense assessments, but only to the
3 extent section [~~514B-105(e)~~] 514B-105(d) expressly so
4 provides;
- 5 (16) Exercise any other powers conferred by the declaration
6 or bylaws;
- 7 (17) Exercise all other powers that may be exercised in
8 this State by legal entities of the same type as the
9 association, except to the extent inconsistent with
10 this chapter;
- 11 (18) Exercise any other powers necessary and proper for the
12 governance and operation of the association; and
- 13 (19) By regulation, subject to sections 514B-146, 514B-161,
14 and 514B-162, require that disputes between the board
15 and unit owners or between two or more unit owners
16 regarding the condominium be submitted to nonbinding
17 alternative dispute resolution in the manner described
18 in the regulation as a prerequisite to commencement of
19 a judicial proceeding."

20 SECTION 10. Section 514B-154, Hawaii Revised Statutes, is
21 amended by amending subsection (a) to read as follows:



1 "(a) The association's most current financial statement
2 shall be provided to any interested unit owner at no cost or on
3 twenty-four-hour loan, at a convenient location designated by
4 the board. The meeting minutes of the board of directors, once
5 approved, for the current and prior year shall either:

6 (1) Be available for examination by apartment owners at no
7 cost or on twenty-four-hour loan at a convenient
8 location at the project, to be determined by the board
9 of directors; or

10 (2) Be transmitted to any apartment owner making a request
11 for the minutes, by the board of directors, the
12 managing agent, or the association's representative,
13 within fifteen days of receipt of the request;
14 provided that the minutes shall be transmitted by
15 mail, electronic mail transmission, or facsimile, by
16 the means indicated by the owner, if the owner
17 indicated a preference at the time of the request; and
18 provided further that the owner shall pay a reasonable
19 fee for administrative costs associated with handling
20 the request.



1 Costs incurred by apartment owners pursuant to this subsection
2 shall be subject to section [~~514B-105(d)~~] 514B-105(c)."

3 SECTION 11. Section 514B-154.5, Hawaii Revised Statutes,
4 is amended by amending subsections (a) and (b) to read as
5 follows:

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

- 14 (1) All financial and other records sufficiently detailed
15 in order to comply with requests for information and
16 disclosures related to the resale of units;
- 17 (2) An accurate copy of the declaration, bylaws, house
18 rules, if any, master lease, if any, a sample original
19 conveyance document, and all public reports and any
20 amendments thereto;



- 1 (3) Detailed, accurate records in chronological order of
2 the receipts and expenditures affecting the common
3 elements, specifying and itemizing the maintenance and
4 repair expenses of the common elements and any other
5 expenses incurred and monthly statements indicating
6 the total current delinquent dollar amount of any
7 unpaid assessments for common expenses;
- 8 (4) All records and the vouchers authorizing the payments
9 and statements kept and maintained at the address of
10 the project, or elsewhere within the State as
11 determined by the board, subject to section 514B-152;
- 12 (5) All signed and executed agreements for managing the
13 operation of the property, expressing the agreement of
14 all parties, including but not limited to financial
15 and accounting obligations, services provided, and any
16 compensation arrangements, including any subsequent
17 amendments;
- 18 (6) An accurate and current list of members of the
19 condominium association and the members' current
20 addresses and the names and addresses of the vendees
21 under an agreement of sale, if any. A copy of the



1 list shall be available, at cost, to any unit owner or
2 owner's authorized agent who furnishes to the managing
3 agent, resident manager, or the board a duly executed
4 and acknowledged affidavit stating that the list:

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

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

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

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

18 (9) Meeting minutes of the board, pursuant to section
19 514B-126, which shall be:

20 (A) Available for examination by unit owners or
21 owners' authorized agents at no cost or on



1 twenty-four-hour loan at a convenient location at
2 the project, to be determined by the board; or

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

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

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

18 514B-105(c);

19 (10) Financial statements, general ledgers, the accounts
20 receivable ledger, accounts payable ledgers, check
21 ledgers, insurance policies, contracts, and invoices



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

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

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

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

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



1 resolution to address condominium related disputes. While the
2 courts are available to resolve conflicts, condominium law
3 should provide incentives for the meaningful use of alternative
4 dispute resolution mechanisms. Thus, the legislature further
5 finds that clarifying the conditions that mandate mediation and
6 exceptions to mandatory mediation is appropriate. The
7 legislature notes that the mandatory mediation proposed by this
8 measure is intended to require parties to resolve condominium-
9 related disputes through the use of alternative dispute
10 resolution.

11 The legislature also finds expanding the scope of the
12 condominium education trust fund to cover voluntary binding
13 arbitration between interested parties will further encourage
14 the use of alternative dispute resolution for condominium
15 related disputes.

16 Accordingly, the purpose of this part is to:

- 17 (1) Expand the scope of the condominium education trust
18 fund to cover voluntary binding arbitration between
19 interested parties; and
20 (2) Amend the conditions that mandate mediation and
21 exceptions to mandatory mediation.



1 SECTION 13. Chapter 514B, Hawaii Revised Statutes, is
2 amended by adding a new section to be appropriately designated
3 and to read as follows:

4 "§514B- Voluntary binding arbitration. (a) Any parties
5 permitted to mediate condominium related disputes pursuant to
6 section 514B-161 may agree to enter into binding arbitration,
7 which may be supported with funds from the condominium education
8 trust fund pursuant to section 514B-71.

9 (b) Any binding arbitration entered into pursuant to this
10 section and supported with funds from the condominium education
11 trust fund:

12 (1) Shall include a fee of \$175 to be paid by each party
13 to the arbitrator;

14 (2) Shall receive no more from the fund than is
15 appropriate under the circumstances, and in no event
16 more than \$3,000 total; and

17 (3) May include issues and parties in addition to those
18 identified in subsection (a); provided that a unit
19 owner or a developer and board are parties to the
20 arbitration at all times and the unit owner or



1 developer and the board mutually consent in writing to
2 the addition of such issues and parties."

3 SECTION 14. Section 514B-71, Hawaii Revised Statutes, is
4 amended by amending subsection (a) to read as follows:

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

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

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

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

17 (4) Support for mediation of condominium related
18 disputes ~~[-]~~; and

19 (5) Support for voluntary binding arbitration between
20 parties in condominium related disputes, pursuant to
21 section 514B- ."



1 SECTION 15. Section 514B-157, Hawaii Revised Statutes, is
2 amended by amending subsection (b) to read as follows:

3 "(b) If any claim by an owner is substantiated in any
4 action against an association, any of its officers or directors,
5 or its board to enforce any provision of the declaration,
6 bylaws, house rules, or this chapter, then all reasonable and
7 necessary expenses, costs, and attorneys' fees incurred by an
8 owner shall be awarded to such owner; provided that no such
9 award shall be made in any derivative action unless:

10 (1) The owner first shall have demanded and allowed
11 reasonable time for the board to pursue such
12 enforcement; or

13 (2) The owner demonstrates to the satisfaction of the
14 court that a demand for enforcement made to the board
15 would have been fruitless.

16 If any claim by an owner is not substantiated in any court
17 action against an association, any of its officers or directors,
18 or its board to enforce any provision of the declaration,
19 bylaws, house rules, or this chapter, then all reasonable and
20 necessary expenses, costs, and attorneys' fees incurred by an
21 association shall be awarded to the association[, ~~unless before~~



1 ~~filing the action in court the owner has first submitted the~~
2 ~~claim to mediation, or to arbitration under subpart D, and made~~
3 ~~a good faith effort to resolve the dispute under any of those~~
4 ~~procedures]."~~

5 SECTION 16. 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 ~~(e) 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 (a) The mediation of a dispute between a unit owner and
16 the board shall be mandatory upon written request to the other
17 party when:

18 (1) The dispute involves the interpretation or enforcement
19 of:

20 (A) The association's declaration, bylaws, or house
21 rules; or



- 1 (B) This chapter;
- 2 (2) The dispute falls outside the scope of subsection (b);
- 3 (3) The parties have not already mediated the same or a
4 substantially similar dispute; and
- 5 (4) An action or an arbitration concerning the dispute has
6 not been commenced.
- 7 (b) The mediation of a dispute between a unit owner and
8 the board shall not be mandatory when the dispute involves:
- 9 (1) Threatened property damage or the health or safety of
10 unit owners or any other person;
- 11 (2) Assessments;
- 12 (3) Personal injury claims; or
- 13 (4) Matters that would affect the availability of any
14 coverage pursuant to an insurance policy obtained by
15 or on behalf of an association.
- 16 (c) If evaluative mediation is requested in writing by one
17 of the parties pursuant to subsection (a), the other party
18 cannot choose to do facilitative mediation instead, and any
19 attempt to do so shall be treated as a rejection to mediate.



1 (d) A unit owner or an association may apply to the
2 circuit court in the judicial circuit where the condominium is
3 located for an order compelling mediation only when:

4 (1) Mediation of the dispute is mandatory pursuant to
5 subsection (a);

6 (2) A written request for mediation has been delivered to
7 and received by the other party; and

8 (3) The parties have not agreed to a mediator and a
9 mediation date within forty-five days after a party
10 receives a written request for mediation.

11 (e) Any application made to the circuit court pursuant to
12 subsection (d) shall be made and heard in a summary manner and
13 in accordance with procedures for the making and hearing of
14 motions. The prevailing party shall be awarded its attorneys'
15 fees and costs in an amount not to exceed \$1,500.

16 (f) Each party to a mediation shall bear the attorneys'
17 fees, costs, and other expenses of preparing for and
18 participating in mediation incurred by the party, in the absence
19 of:

20 (1) A written agreement providing otherwise that is signed
21 by the parties;



- 1 (2) An order of a court in connection with the final
2 disposition of a claim that was submitted to
3 mediation; or
- 4 (3) An award of an arbitrator in connection with the final
5 disposition of a claim that was submitted to
6 mediation.
- 7 (g) Any individual mediation supported with funds from the
8 condominium education trust fund pursuant to section 514B-71:
- 9 (1) Shall include a fee of \$150 to be paid by each party
10 to the mediator;
- 11 (2) Shall receive no more from the fund than is
12 appropriate under the circumstances, and in no event
13 more than \$6,000 total;
- 14 (3) May include issues and parties in addition to those
15 identified in subsection (a); provided that a unit
16 owner or a developer and board are parties to the
17 mediation at all times and the unit owner or developer
18 and the board mutually consent in writing to the
19 addition of such issues and parties; and
- 20 (4) May include an evaluation by the mediator of any
21 claims presented during the mediation.



Report Title:

Condominiums; Condominium Associations; Owners; Cure of Default; Disputed Charges; Common Expense Assessments; Mediation; Arbitration; Condominium Education Trust Fund

Description:

Parts I through IV: clarifies the process, including payment obligations, mediation requirements, and triggers for further default, where a condominium unit owner and association reach a payment plan to resolve a nonjudicial foreclosure; establishes procedures that provide condominium owners with the right to submit disputed legal fees, penalties or fines, late fees, lien filing fees, or other charges, except for common expense assessments, to the mediation process prior to payment; and makes conforming amendments. Part V: expands the scope of the condominium education trust fund to cover voluntary binding arbitration between interested parties; amends the conditions that mandate mediation and exceptions to mandatory mediation. (Proposed SD1)

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

