H.B. NO. ¹⁸⁷⁴ H.D. 1 S.D. 2

C.D. 1

A BILL FOR AN ACT

RELATING TO CONDOMINIUMS.

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

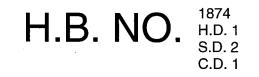
1 SECTION 1. The legislature finds that mediation is an 2 existing and appropriate method of alternative dispute 3 resolution to address condominium related disputes. While the 4 courts are available to resolve conflicts, condominium law 5 should provide incentives for the meaningful use of alternative 6 dispute resolution mechanisms. Thus, the legislature further 7 finds that clarifying the conditions that mandate mediation and 8 exceptions to mandatory mediation is appropriate. The 9 legislature notes that the mandatory mediation proposed by this 10 Act is intended to require parties to resolve condominium 11 related disputes through the use of alternative dispute 12 resolution.

13 The legislature also finds that authorizing the condominium 14 education trust fund, which is currently dedicated to supporting 15 mediation, to also be used for voluntary binding arbitration 16 will further encourage the use of alternative dispute resolution 17 for condominium related disputes.

18 Accordingly, the purpose of this Act is to: HB1874 CD1 HMS 2018-3760



Page 2



1	(1)	Expand the scope of the condominium education trust	
2		fund to cover voluntary binding arbitration between	
3		interested parties; and	
4	(2)	Amend the conditions that mandate mediation and	
5		exceptions to mandatory mediation.	
6	SECT	ION 2. Chapter 514B, Hawaii Revised Statutes, is	
7	amended b	y adding a new section to be appropriately designated	
8	and to re	ad as follows:	
9	" <u>§</u> 51	4B- Voluntary binding arbitration. (a) Any parties	
10	permitted	to mediate condominium related disputes pursuant to	
11	section 514B-161 may agree to enter into voluntary binding		
12	arbitrati	on, which may be supported with funds from the	
13	condominium education trust fund pursuant to section 514B-71;		
14	provided that voluntary binding arbitration under this section		
15	may be supported with funds from the condominium education trust		
16	fund only	after the parties have first attempted evaluative	
17	mediation.		
18	(b)	Any voluntary binding arbitration entered into	
19	pursuant	to this section and supported with funds from the	
20	condomini	um education trust fund:	



Page 3



1	(1)	Shall include a fee of \$175 to be paid by each party
2		to the arbitrator;
3	(2)	Shall receive no more from the fund than is
4		appropriate under the circumstances, and in no event
5		more than \$6,000 total; and
6	(3)	May include issues and parties in addition to those
7		identified in subsection (a); provided that a unit
8		owner or a developer and board are parties to the
9		arbitration at all times and the unit owner or
10		developer and the board mutually consent in writing to
11		the addition of the issues and parties."
12	SECT	ION 3. Section 514B-71, Hawaii Revised Statutes, is
13	amended b	y amending subsection (a) to read as follows:
14	"(a)	The commission shall establish a condominium
15	education	trust fund that the commission shall use for
16	education	al purposes. Educational purposes shall include
17	financing	or promoting:
18	(1)	Education and research in the field of condominium
19		management, condominium project registration, and real
20		estate, for the benefit of the public and those
21		required to be registered under this chapter;



Page 4

1	(2)	The improvement and more efficient administration of
2		associations;
3	(3)	Expeditious and inexpensive procedures for resolving
4		association disputes; [and]
5	(4)	Support for mediation of condominium related
6		disputes [-] ; and
7	(5)	Support for voluntary binding arbitration between
8		parties in condominium related disputes, pursuant to
9		section 514B"
10	SECT	ION 4. Section 514B-72, Hawaii Revised Statutes, is
11	amended by	y amending subsection (a) to read as follows:
12	"(a)	Each project or association with more than five units
13	shall pay	to the department of commerce and consumer affairs:
14	(1)	A condominium education trust fund fee within one year
15		after the recordation of the purchase of the first
16		unit or within thirty days of the association's first
17		meeting, and thereafter, on or before June 30 of every
18		odd-numbered year, as prescribed by rules adopted
19		pursuant to chapter 91; and
20	(2)	Beginning with the July 1, 2015, biennium
21		registration, an additional annual condominium



4

1874 H.D. 1 S.D. 2 C.D. 1

H.B. NO.

H.B. NO. ¹⁸⁷⁴ H.D. 1 S.D. 2 C.D. 1

1 education trust fund fee in an amount equal to the 2 product of \$1.50 times the number of condominium units 3 included in the registered project or association to be dedicated to supporting mediation or voluntary 4 5 binding arbitration of condominium related disputes. The additional condominium education trust fund fee 6 7 shall total \$3 per unit until the commission adopts rules pursuant to chapter 91. On June 30 of every 8 odd-numbered year, any unexpended additional amounts 9 10 paid into the condominium education trust fund and initially dedicated to supporting mediation or 11 12 voluntary binding arbitration of condominium related 13 disputes, as required by this paragraph, shall be used 14 for educational purposes as provided in section 514B-71(a)(1), (2), and (3)." 15 SECTION 5. Section 514B-161, Hawaii Revised Statutes, is 16

16 SECTION 5. Section 514B-161, Hawaii Revised Statutes, is17 amended to read as follows:

18 "\$514B-161 Mediation. [(a) If an apartment owner or the 19 board of directors requests mediation of a dispute involving the 20 interpretation or enforcement of the association of apartment 21 owners' declaration, bylaws, or house rules, the other party in



Page 6

1	the dispu	te shall be required to participate in mediation. Each
2	party sha	ll be wholly responsible for its own costs of
3	participa	ting in mediation, unless both parties agree that one
4	party sha	11 pay all or a specified portion of the mediation
5	costs. I	f a party refuses to participate in the mediation of a
6	particula	r dispute, a court may take this refusal into
7	considera	tion when awarding expenses, costs, and attorneys'
8	fees.	
9	(b)	Nothing in subsection (a) shall be interpreted to
10	mandate t	he mediation of any dispute involving:
11	(1)	Actions seeking equitable relief involving threatened
12		property damage or the health or safety of association
13		members or any other person;
14	(2)	Actions to collect assessments;
15	(3)	Personal injury claims; or
16	-(4)	Actions against an association, a board, or one or
17		more directors, officers, agents, employees, or other
18		persons for amounts in excess of \$2,500 if insurance
19		coverage under a policy of insurance procured by the
20		association or its board would be unavailable for
21		defense or judgment because mediation was pursued.



6

1874 H.D. 1 S.D. 2 C.D. 1

H.B. NO.



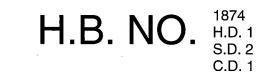
1	(c)	If any mediation under this section is not completed
2	within two	o months from commencement, no further mediation shall
3	be require	ed unless agreed to by the parties.]
4	(a)	The mediation of a dispute between a unit owner and
5	the board	, unit owner and the managing agent, board members and
6	the board	, or directors and managing agents and the board shall
7	be mandate	ory upon written request to the other party when:
8	(1)	The dispute involves the interpretation or enforcement
9		of the association's declaration, bylaws, or house
10		rules;
11	(2)	The dispute falls outside the scope of subsection (b);
12	(3)	The parties have not already mediated the same or a
13		substantially similar dispute; and
14	(4)	An action or an arbitration concerning the dispute has
15		not been commenced.
16	(b)	The mediation of a dispute between a unit owner and
17	the board	, unit owner and the managing agent, board members and
18	the board	, or directors and managing agents and the board shall
19	not be man	ndatory when the dispute involves:
20	(1)	Threatened property damage or the health or safety of
21		unit owners or any other person;



H.B. NO.	1874 H.D. 1 S.D. 2 C.D. 1
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1	(2)	Assessments;
2	<u>(3)</u>	Personal injury claims; or
3	(4)	Matters that would affect the availability of any
4		coverage pursuant to an insurance policy obtained by
5		or on behalf of an association.
6	(c)	If evaluative mediation is requested in writing by one
7	of the pa	rties pursuant to subsection (a), the other party
8	<u>cannot ch</u>	oose to do facilitative mediation instead, and any
9	attempt t	o do so shall be treated as a rejection to mediate.
10	<u>(d)</u>	A unit owner or an association may apply to the
11	<u>circuit c</u>	ourt in the judicial circuit where the condominium is
12	located f	or an order compelling mediation only when:
13	(1)	Mediation of the dispute is mandatory pursuant to
14		subsection (a);
15	(2)	A written request for mediation has been delivered to
16		and received by the other party; and
17	(3)	The parties have not agreed to a mediator and a
18		mediation date within forty-five days after a party
19		receives a written request for mediation.
20	(e)	Any application made to the circuit court pursuant to
21	subsectio	on (d) shall be made and heard in a summary manner and





1	in accord	ance with procedures for the making and hearing of
2	motions.	The prevailing party shall be awarded its attorneys'
3	fees and	costs in an amount not to exceed \$1,500.
4	(f)	Each party to a mediation shall bear the attorneys'
5	fees, cos	ts, and other expenses of preparing for and
6	participa	ting in mediation incurred by the party, unless
7	otherwise	specified in:
8	(1)	A written agreement providing otherwise that is signed
9		by the parties;
10	(2)	An order of a court in connection with the final
11		disposition of a claim that was submitted to
12		mediation;
13	(3)	An award of an arbitrator in connection with the final
14		disposition of a claim that was submitted to
15		mediation; or
16	(4)	An order of the circuit court in connection with
17		compelled mediation in accordance with subsection (e).
18	<u>(g)</u>	Any individual mediation supported with funds from the
19	condomini	um education trust fund pursuant to section 514B-71:
20	(1)	Shall include a fee of \$375 to be paid by each party
21		to the mediator;



H.B. NO. ¹⁸⁷⁴ H.D. 1 S.D. 2 C.D. 1

1	(2)	Shall receive no more from the fund than is
2		appropriate under the circumstances, and in no event
3		more than \$3,000 total;
4	(3)	May include issues and parties in addition to those
5		identified in subsection (a); provided that a unit
6		owner or a developer and board are parties to the
7		mediation at all times and the unit owner or developer
8		and the board mutually consent in writing to the
9		addition of the issues and parties; and
10	(4)	May include an evaluation by the mediator of any
11		claims presented during the mediation.
12	(h)	A court or an arbitrator with jurisdiction may
13	consider	a timely request to stay any action or proceeding
14	concernin	g a dispute that would be subject to mediation pursuant
15	to subsec	tion (a) in the absence of the action or proceeding,
16	and refer	the matter to mediation; provided that:
17	(1)	The court or arbitrator determines that the request is
18		made in good faith and a stay would not be prejudicial
19		to any party; and
20	(2)	No stay shall exceed a period of ninety days."



1	SECTION 6. Act 187, Session Laws of Hawaii 2013, is
2	amended by amending section 5 to read as follows:
3	"SECTION 5. The department of commerce and consumer
4	affairs professional and vocational licensing division's budget
5	ceiling shall be amended to reflect the additional annual
6	condominium education trust fund fee required by section
7	514B-72(a)(2), Hawaii Revised Statutes, and paid into the
8	condominium education trust fund, established by section
9	514B-71, Hawaii Revised Statutes. On June 30 of every odd-
10	numbered year, any unexpended additional amounts paid into the
11	condominium education trust fund and initially dedicated to
12	supporting mediation or voluntary binding arbitration, until
13	June 30, 2023, of condominium related disputes, as required by
14	section 514B-72(a)(2), Hawaii Revised Statutes, shall be used
15	for educational purposes as provided in section 514B-71(a)(1),
16	(2), and (3), Hawaii Revised Statutes."

17 SECTION 7. This Act does not affect rights and duties that 18 matured, penalties that were incurred, and proceedings that were 19 begun before its effective date.

20 SECTION 8. Statutory material to be repealed is bracketed21 and stricken. New statutory material is underscored.



H.B. NO. ¹⁸⁷⁴ H.D. 1 S.D. 2 C.D. 1

SECTION 9. This Act shall take effect on January 2, 2019,
and, except for section 6, shall be repealed on June 30, 2023;
provided that sections 514B-71(a), 514B-72(a), and 514B-161,
Hawaii Revised Statutes, shall be reenacted in the form in which
they read on January 1, 2019.





Report Title:

Condominiums; Associations; Unit Owners; Mediation; Arbitration; Condominium Education Trust Fund

Description:

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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. Makes conforming amendments. (HB1874 CD1)

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

