

JAN 25 2017

A BILL FOR AN ACT

RELATING TO CONDOMINIUMS.

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

1 PART I

2 SECTION 1. The legislature finds that while condominium
3 self-governance has been successful in the State, there have
4 been abuses as evidenced by the actions of certain condominium
5 boards. The legislature also finds that a central enforcement
6 body is needed to address the problems faced by many condominium
7 owners who sometimes fear retribution from certain board members
8 when challenging their governance.

9 The purpose of this Act is to establish an office of
10 condominium complaints and enforcement within the department of
11 the attorney general.

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

15 **"PART . OFFICE OF CONDOMINIUM COMPLAINTS AND ENFORCEMENT**

16 **§514B-A Office of condominium complaints and enforcement;**

17 **complaints and enforcement officer.** There is established within



1 the department of the attorney general the office of condominium
2 complaints and enforcement. The office of condominium
3 complaints and enforcement shall be headed by the complaints and
4 enforcement officer, who shall be appointed by the attorney
5 general in consultation with the director of commerce and
6 consumer affairs, with the approval of the governor. The
7 complaints and enforcement officer shall have been admitted to
8 practice law before the supreme court of this State and shall
9 have extensive experience in Hawaii real estate and condominium
10 law and in conflict and alternative dispute resolution. The
11 complaints and enforcement officer shall be exempt from chapter
12 76.

13 **§514B-B Personnel; salary; benefits.** (a) The complaints
14 and enforcement officer may appoint as staff members persons who
15 have been admitted to practice law before the supreme court of
16 this State without regard to chapter 76. All other employees
17 shall be appointed by the complaints and enforcement officer in
18 accordance with chapter 76.

19 (b) The salary of the complaints and enforcement officer
20 shall be set by the attorney general but shall not be more than



1 the maximum salary of the first deputy attorney general. The
2 complaints and enforcement officer and attorney staff members
3 shall be included in any benefit program generally applicable to
4 the officers and employees of the State.

5 **§514B-C Powers and duties.** The complaints and enforcement
6 officer shall:

- 7 (1) Investigate disputes brought by unit owners, pursuant
8 to section 514B-D;
- 9 (2) Make recommendations or give guidance as necessary to
10 assist unit owners;
- 11 (3) Upon request, assist unit owners with processing
12 requests submitted to alternative dispute resolution
13 pursuant to part VI, subpart D;
- 14 (4) In conjunction with the commission and via moneys in
15 the condominium education trust fund, educate the
16 public and those required to be registered under this
17 chapter;
- 18 (5) Publish advisory opinions upon request from unit
19 owners;



1 (6) Upon request, submit an action according to section
2 514B-111 to amend a provision in the governing
3 documents if the complaints and enforcement officer
4 determines that the provision is obsolete, antiquated,
5 or moot; and

6 (7) Adopt rules in accordance with chapter 91 necessary to
7 carry out the purposes of this part.

8 **§514B-D Request for dispute intervention; intervention**
9 **affidavit.** (a) Except as otherwise provided in this section, a
10 unit owner who is party to a dispute involving the
11 interpretation or enforcement of an association's declaration,
12 bylaws, or house rules may file with the office of condominium
13 complaints and enforcement a written request for dispute
14 intervention. The written request shall be in the form of an
15 affidavit that sets forth the facts constituting the dispute and
16 information regarding a financial need to qualify for services.

17 (b) Prior to submission of an intervention affidavit, a
18 unit owner shall provide the association or board with written
19 notice of the dispute as set forth in the intervention
20 affidavit. The notice shall be sent by means of certified mail,



1 return receipt requested, with restricted delivery only to the
2 addressee. The notice shall specify, in reasonable detail:

- 3 (1) The dispute;
- 4 (2) Any alleged damages that resulted from the dispute;
- 5 and
- 6 (3) Any proposed corrective action to resolve the dispute.

7 (c) An intervention affidavit filed with the office of
8 condominium complaints and enforcement pursuant to this section
9 shall be on a form prescribed by the office and be accompanied
10 by evidence that:

- 11 (1) The respondent has been given a reasonable
12 opportunity, after receiving the written notice, to
13 correct the dispute; and
- 14 (2) Reasonable efforts to resolve the dispute have failed.

15 (d) The commission may impose a minimum fine of \$1,000
16 against any person who knowingly files a false or fraudulent
17 intervention affidavit with the office of complaints and
18 enforcement oversight.



1 (e) A written request for dispute intervention under
2 subsection (a) may not be filed by any unit owner who is
3 currently serving as a member of a board.

4 **§514B-E Enforcement by complaints and enforcement officer;**
5 **dispute resolution assistance.** (a) Upon receipt of an
6 intervention affidavit pursuant to section 514B-D, the
7 complaints and enforcement officer shall open an investigation
8 into the dispute.

9 (b) The complaints and enforcement officer may interview
10 parties and witnesses involved in the dispute and may request
11 the production of documents, records, and information pursuant
12 to section 514B-154.5.

13 (c) The complaints and enforcement officer shall make
14 recommendations, give guidance, or issue an advisory opinion to
15 the unit owner as the complaints and enforcement officer deems
16 necessary.

17 (d) If the complaints and enforcement officer determines
18 an association or board is at fault in a dispute, the
19 association or board shall be responsible for any legal fees



1 incurred or fines levied against the unit owner involved in the
2 dispute.

3 (e) The complaints and enforcement officer may impose a
4 minimum fine of \$1,000 on the respondent, including the board,
5 other management entities, or both, if the respondent knowingly
6 submits false or fraudulent information in the process of the
7 complaints and enforcement officer's enforcements.

8 (f) If the parties cannot reach an agreement under this
9 section, either party may request participation in a contested
10 case hearing.

11 **§514B-G Contested case hearing.** (a) A contested case
12 hearing shall be conducted pursuant to chapter 91 and any rules
13 adopted by the office of condominium complaints and enforcement,
14 except as provided in this section.

15 (b) If a hearing is held before the office of condominium
16 complaints and enforcement, the office of condominium complaints
17 and enforcement shall not be bound by the rules of evidence when
18 conducting a hearing to determine whether a violation of this
19 part has occurred, and the standard of proof required shall be
20 preponderance of the evidence.



1 (c) The office of condominium complaints and enforcement
2 or hearings officer, if there is no dispute as to the facts
3 involved in a particular matter, may permit the parties to
4 proceed by memoranda of law in lieu of a hearing unless the
5 procedure would unduly burden any party or is otherwise not
6 conducive to the ends of justice.

7 (d) A record shall be made of the proceeding.

8 (e) All parties shall be afforded full opportunity to
9 present evidence and argument on all issues involved.

10 (f) Any person who appears before the office of
11 condominium complaints and enforcement shall have all of the
12 rights, privileges, and responsibilities of a witness appearing
13 before the courts of this State. All witnesses summoned before
14 the office of condominium complaints and enforcement or hearings
15 officer shall receive reimbursements as paid in like
16 circumstances in the courts of this State. Any person whose
17 name is mentioned during a proceeding before the office of
18 condominium complaints and enforcement and who may be adversely
19 affected thereby may appear or file a written statement for
20 incorporation into the record of the proceeding.



1 (g) If a hearing is held before a hearings officer, the
2 hearings officer shall render a recommended decision for the
3 office of condominium complaints and enforcement's
4 consideration. Any party adversely affected by the decision may
5 file written exceptions with the office of condominium
6 complaints and enforcement within fifteen days after receipt of
7 a copy of the decision by certified mail.

8 (h) The office of condominium complaints and enforcement,
9 as expeditiously as possible after the close of the hearing,
10 shall issue its final determination of violation together with
11 separate findings of fact and conclusions of law regarding
12 whether a violation of this part has been committed.

13 **§514B-G Fines or fees.** Any fine or fee collected pursuant
14 to this part shall be deposited into the office of condominium
15 complaints and enforcement special fund established pursuant to
16 section 514B-H.

17 **§514B-H Office of condominium complaints and enforcement**
18 **special fund.** (a) There is established an office of
19 condominium complaints and enforcement special fund into which
20 shall be deposited the following moneys:



- 1 (1) Appropriations by the legislature to the special fund;
- 2 (2) Gifts, donations, and grants from public agencies and
- 3 private persons;
- 4 (3) Administrative penalties, fines, and other charges
- 5 collected under this chapter or any rule adopted
- 6 pursuant to this chapter; and
- 7 (4) Thirty-five per cent of all fees collected into the
- 8 condominium education trust fund under section 514B-
- 9 71.

10 (b) All interest earned or accrued on moneys deposited in
11 the fund shall become part of the fund.

12 (c) The office of condominium complaints and enforcement
13 shall adopt rules in accordance with chapter 91 for the purposes
14 of this section."

15 SECTION 3. Chapter 514B, Hawaii Revised Statutes, is
16 amended by adding a new section to part VI to be appropriately
17 designated and to read as follows:

18 "§514B- Board member; disclosure; education. (a) Every
19 member of a board shall file annually with the office of self-
20 governance oversight a financial disclosure form as required



1 pursuant to rules adopted by the office of self-governance
2 oversight. The financial disclosure shall be confidential and
3 not open to public inspection.

4 (b) The complaints and enforcement officer shall establish
5 a condominium education class for new members of a board.

6 (c) Every person chosen to be a new member of a board
7 shall take the condominium education class and obtain a
8 certificate of completion within three months of acceptance to
9 the board."

10 SECTION 4. Section 514B-3, Hawaii Revised Statutes, is
11 amended by adding a new definition to be appropriately inserted
12 and to read as follows:

13 "Complaints and enforcement officer" means the complaints
14 and enforcement officer established pursuant to section 514B-A."

15 SECTION 5. Section 514B-22, Hawaii Revised Statutes, is
16 amended to read as follows:

17 **"§514B-22 Applicability to preexisting condominiums.**

18 Sections 514B-4, 514B-5, 514B-35, 514B-41(c), 514B-46, 514B-72,
19 [and] part VI, part , and section 514B-3 to the extent
20 definitions are necessary in construing any of those provisions,



1 and all amendments thereto, apply to all condominiums created in
2 this State before July 1, 2006; provided that those sections:

- 3 (1) Shall apply only with respect to events and
4 circumstances occurring on or after July 1, 2006; and
5 (2) Shall not invalidate existing provisions of the
6 declaration, bylaws, condominium map, or other
7 constituent documents of those condominiums if to do
8 so would invalidate the reserved rights of a developer
9 or be an unreasonable impairment of contract.

10 For purposes of interpreting this chapter, the terms
11 "condominium property regime" and "horizontal property regime"
12 shall be deemed to correspond to the term "condominium"; the
13 term "apartment" shall be deemed to correspond to the term
14 "unit"; the term "apartment owner" shall be deemed to correspond
15 to the term "unit owner"; and the term "association of apartment
16 owners" shall be deemed to correspond to the term
17 "association".

18 SECTION 6. Section 514B-68, Hawaii Revised Statutes, is
19 amended to read as follows:



1 **"§514B-68 Power to enjoin.** Whenever the [~~commission~~]
2 office of condominium complaints and enforcement believes from
3 satisfactory evidence that any person or entity has violated
4 this part, part V, section 514B-103, 514B-132, 514B-134,
5 514B-149, sections 514B-152 to 514B-154, section 514B-154.5, or
6 the rules of the commission adopted pursuant thereto, it may
7 conduct [~~an~~] a civil or criminal investigation of the matter and
8 bring an action against the person or entity in any court of
9 competent jurisdiction on behalf of the State to enjoin the
10 person or entity from continuing the violation or doing any acts
11 in furtherance thereof."

12 SECTION 7. Section 514B-71, Hawaii Revised Statutes, is
13 amended to read as follows:

14 **"§514B-71 Condominium education trust fund.** (a) The
15 commission shall establish a condominium education trust fund
16 that the commission and the office of condominium complaints and
17 enforcement shall use for educational purposes. Educational
18 purposes shall include financing or promoting:

19 (1) Education and research in the field of condominium
20 management, condominium project registration, and real



1 estate, for the benefit of the public and those
2 required to be registered under this chapter;
3 (2) The improvement and more efficient administration of
4 associations; and
5 (3) Expeditious and inexpensive procedures for resolving
6 association disputes[~~;~~ and
7 ~~(4) Support for mediation of condominium related~~
8 ~~disputes].~~

9 (b) The commission and office of condominium complaints
10 and enforcement shall use all moneys in the condominium
11 education trust fund for purposes consistent with subsection
12 (a) [~~;~~]; provided that thirty-five per cent of the fees collected
13 in the trust fund shall be transferred to office of condominium
14 complaints and enforcement special fund that is established
15 under section 514B-H for use by the office of condominium
16 complaints and enforcement."

17 SECTION 8. Section 514B-73, Hawaii Revised Statutes, is
18 amended as follows:

19 1. By amending subsection (b) to read:



1 "(b) The commission and the director of commerce and
2 consumer affairs may use moneys in the condominium education
3 trust fund collected pursuant to sections 514A-40, 514A-95.1,
4 and 514B-72, and the rules of the commission to employ necessary
5 personnel not subject to chapter 76 for additional staff
6 support, to provide office space, and to purchase equipment,
7 furniture, and supplies required by the commission to carry out
8 its responsibilities under this part. The complaints and
9 enforcement officer may use moneys in the condominium education
10 trust fund collected pursuant to sections 514A-40, 514A-95.1,
11 and 514B-72, for educational purposes, including the
12 establishment of a condominium education class and necessary
13 purchase of equipment and supplies required by the office of
14 condominium complaints and enforcement to carry out its
15 responsibilities under this part and part ."

16 2. By amending subsection (d) to read:

17 "(d) The [~~commission~~] complaints and enforcement officer
18 shall annually submit to the legislature, no later than twenty
19 days prior to the convening of each regular session:



- 1 (1) A summary of the programs funded during the prior
2 fiscal year and the amount of money in the fund,
3 including a statement of which programs were directed
4 specifically at the education of condominium owners;
5 [and]
- 6 (2) A copy of the budget for the current fiscal year,
7 including summary information on programs that were
8 funded or are to be funded and the target audience for
9 each program. The budget shall include a line item
10 reflecting the total amount collected from condominium
11 associations[+]; and
- 12 (3) A detailed summary of all cases and opinions issued
13 during the prior fiscal year."

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

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

- 19 (1) Adopt and amend the declaration, bylaws, and rules and
20 regulations;



- 1 (2) Adopt and amend budgets for revenues, expenditures,
2 and reserves and collect assessments for common
3 expenses from unit owners, subject to section
4 514B-148;
- 5 (3) Hire and discharge managing agents and other
6 independent contractors, agents, and employees;
- 7 (4) Institute, defend, or intervene in litigation or
8 administrative proceedings in its own name on behalf
9 of itself or two or more unit owners on matters
10 affecting the condominium. For the purposes of
11 actions under chapter 480, associations shall be
12 deemed to be "consumers";
- 13 (5) Make contracts and incur liabilities;
- 14 (6) Regulate the use, maintenance, repair, replacement,
15 and modification of common elements;
- 16 (7) Cause additional improvements to be made as a part of
17 the common elements;
- 18 (8) Acquire, hold, encumber, and convey in its own name
19 any right, title, or interest to real or personal
20 property; provided that:



- 1 (A) Designation of additional areas to be common
2 elements or subject to common expenses after the
3 initial filing of the declaration or bylaws shall
4 require the approval of at least sixty-seven per
5 cent of the unit owners;
- 6 (B) If the developer discloses to the initial buyer
7 in writing that additional areas will be
8 designated as common elements whether pursuant to
9 an incremental or phased project or otherwise,
10 the requirements of this paragraph shall not
11 apply as to those additional areas; and
- 12 (C) The requirements of this paragraph shall not
13 apply to the purchase of a unit for a resident
14 manager, which may be purchased with the approval
15 of the board;
- 16 (9) Subject to section 514B-38, grant easements, leases,
17 licenses, and concessions through or over the common
18 elements and permit encroachments on the common
19 elements;



- 1 (10) Impose and receive any payments, fees, or charges for
2 the use, rental, or operation of the common elements,
3 other than limited common elements described in
4 section 514B-35(2) and (4), and for services provided
5 to unit owners;
- 6 (11) Impose charges and penalties, including late fees and
7 interest, for late payment of assessments and levy
8 reasonable fines for violations of the declaration,
9 bylaws, rules, and regulations of the association,
10 either in accordance with the bylaws or, if the bylaws
11 are silent, pursuant to a resolution adopted by the
12 board that establishes a fining procedure that states
13 the basis for the fine and allows an appeal to the
14 board of the fine with notice and an opportunity to be
15 heard and providing that if the fine is paid, the unit
16 owner shall have the right to initiate a dispute
17 resolution process as provided by ~~sections~~ section
18 514B-161[7] or 514B-162, by requesting dispute
19 intervention or dispute resolution assistance from the
20 complaints and enforcement officer as provided by



- 1 section 514B-D or 514B-E, or by filing a request for
2 an administrative hearing under a pilot program
3 administered by the department of commerce and
4 consumer affairs;
- 5 (12) Impose reasonable charges for the preparation and
6 recordation of amendments to the declaration,
7 documents requested for resale of units, or statements
8 of unpaid assessments;
- 9 (13) Provide for cumulative voting through a provision in
10 the bylaws;
- 11 (14) Provide for the indemnification of its officers,
12 board, committee members, and agents, and maintain
13 directors' and officers' liability insurance;
- 14 (15) Assign its right to future income, including the right
15 to receive common expense assessments, but only to the
16 extent section 514B-105(e) expressly so provides;
- 17 (16) Exercise any other powers conferred by the declaration
18 or bylaws;
- 19 (17) Exercise all other powers that may be exercised in
20 this State by legal entities of the same type as the



1 association, except to the extent inconsistent with
2 this chapter;

3 (18) Exercise any other powers necessary and proper for the
4 governance and operation of the association; and

5 (19) By regulation, subject to sections 514B-146, 514B-161,
6 and 514B-162, require that disputes between the board
7 and unit owners or between two or more unit owners
8 regarding the condominium be submitted to nonbinding
9 alternative dispute resolution in the manner described
10 in the regulation as a prerequisite to commencement of
11 a judicial proceeding."

12 SECTION 10. Section 514B-105, Hawaii Revised Statutes, is
13 amended to read as follows:

14 "**§514B-105 Association; limitations on powers.** (a) The
15 declaration and bylaws [~~may~~] shall not impose limitations on the
16 power of the association to deal with the developer [~~which~~] that
17 are more restrictive than the limitations imposed on the power
18 of the association to deal with other persons.

19 (b) Unless otherwise permitted by the declaration, bylaws,
20 or this chapter, an association may adopt rules and regulations



1 that affect the use of or behavior in units that may be used for
2 residential purposes only to:

3 (1) Prevent any use of a unit [~~which~~] that violates the
4 declaration or bylaws;

5 (2) Regulate any behavior in or occupancy of a unit
6 [~~which~~] that violates the declaration or bylaws or
7 unreasonably interferes with the use and enjoyment of
8 other units or the common elements by other unit
9 owners; or

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

16 Otherwise, the association [~~may~~] shall not regulate any use of
17 or behavior in units by means of the rules and regulations.

18 (c) No association shall deduct and apply portions of
19 common expense payments received from a unit owner to unpaid
20 late fees, legal fees, fines, and interest (other than amounts



1 remitted by a unit in payment of late fees, legal fees, fines,
2 and interest) unless the board adopts and distributes to all
3 owners a policy stating that:

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

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

13 (d) No unit owner who requests legal or other information
14 from the association, the board, the managing agent, or their
15 employees or agents, shall be charged for the reasonable cost of
16 providing the information unless the association notifies the
17 unit owner that it intends to charge the unit owner for the
18 reasonable cost. The association shall notify the unit owner in
19 writing at least ten days prior to incurring the reasonable cost
20 of providing the information, except that no prior notice shall



1 be required to assess the reasonable cost of providing
2 information on delinquent assessments or in connection with
3 proceedings to enforce the law or the association's governing
4 documents.

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

10 (e) Subject to any approval requirements and spending
11 limits contained in the declaration or bylaws, the association
12 may authorize the board to borrow money for the repair,
13 replacement, maintenance, operation, or administration of the
14 common elements and personal property of the project, or the
15 making of any additions, alterations, and improvements thereto;
16 provided that written notice of the purpose and use of the funds
17 is first sent to all unit owners and owners representing fifty
18 per cent of the common interest vote or give written consent to
19 the borrowing[-]; provided further that if the cost of borrowing
20 is a major expenditure in excess of \$10,000 per unit owner, the



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

16 (f) If the association or the board is involved in a
17 dispute intervention through the office of condominium
18 complaints and enforcement pursuant to section 514B-D, no
19 special assessment related to the dispute, including association
20 attorneys' fees, shall be assessed or collected from unit owners



1 until the complaints and enforcement officer has completed the
2 intervention enforcement."

3 SECTION 11. Section 514B-154.5, Hawaii Revised Statutes,
4 is amended to read as follows:

5 "[+]§514B-154.5[+] **Association documents to be provided.**

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



1 under an agreement of sale, if any. A copy of the
2 list shall be available, at cost, to any unit owner or
3 owner's authorized agent who furnishes to the managing
4 agent, resident manager, or the board a duly executed
5 and acknowledged affidavit stating that the list:

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

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

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

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

19 (9) Meeting minutes of the board, including executive
20 session records of voting results regarding the



1 imposition of special assessments, charges, and fines,
2 including legal fees, pursuant to section 514B-126,
3 which shall be:

4 (A) Available for examination by unit owners or
5 owners' authorized agents at no cost or on
6 twenty-four-hour loan at a convenient location at
7 the project, to be determined by the board; or

8 (B) Transmitted to any unit owner or owner's
9 authorized agent making a request for the minutes
10 within fifteen days of receipt of the request by
11 the owner or owner's authorized agent; provided
12 that:

13 (i) The minutes shall be transmitted by mail,
14 electronic mail transmission, or facsimile,
15 by the means indicated by the owner or
16 owner's authorized agent, if the owner or
17 owner's authorized agent indicated a
18 preference at the time of the request; and

19 (ii) The owner or owner's authorized agent shall
20 pay a reasonable fee for administrative



1 costs associated with handling the request,
2 subject to section 514B-105(d);

3 (10) Financial statements, general ledgers, the accounts
4 receivable ledger, accounts payable ledgers, check
5 ledgers, insurance policies, contracts, and invoices
6 of the association for the duration those records are
7 kept by the association, and any documents regarding
8 delinquencies of ninety days or more shall be
9 available for examination by unit owners or owners'
10 authorized agents at convenient hours at a place
11 designated by the board; provided that:

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

18 (B) Unit owners or owners' authorized agents shall
19 pay for administrative costs in excess of eight
20 hours per year;



- 1 (11) Proxies, tally sheets, ballots, unit owners' check-in
2 lists, and the certificate of election subject to
3 section 514B-154(c);
- 4 (12) Copies of an association's documents, records, and
5 information, whether maintained, kept, or required to
6 be provided pursuant to this section or section
7 514B-152, 514B-153, or 514B-154;
- 8 (13) A copy of the management contract from the entity that
9 manages the operation of the property before the
10 organization of an association; and
- 11 (14) Other documents requested by a unit owner or owner's
12 authorized agent in writing; provided that the board
13 shall give written authorization or written refusal
14 with an explanation of the refusal within thirty
15 calendar days of receipt of a request for documents
16 pursuant to this paragraph.
- 17 (b) Subject to section 514B-105(d), copies of the items in
18 subsection (a) shall be provided to any unit owner or owner's
19 authorized agent upon the owner's or owner's authorized agent's
20 request; provided that the owner or owner's authorized agent



1 pays a reasonable fee for duplication, postage, stationery, and
2 other administrative costs associated with handling the request.

3 (c) Notwithstanding any provision in the declaration,
4 bylaws, or house rules providing for another period of time, all
5 documents, records, and information listed under subsection (a),
6 whether maintained, kept, or required to be provided pursuant to
7 this section or section 514B-152, 514B-153, or 514B-154, shall
8 be provided no later than thirty days after receipt of a unit
9 owner's or owner's authorized agent's written request, unless a
10 lesser time is provided pursuant to this section or section
11 514B-152, 514B-153, or 514B-154, and except as provided in
12 subsection (a)(14).

13 (d) Any documents, records, and information, whether
14 maintained, kept, or required to be provided pursuant to this
15 section or section 514B-152, 514B-153, or 514B-154, may be made
16 available electronically to the unit owner or owner's authorized
17 agent if the owner or owner's authorized agent requests such in
18 writing.

19 (e) An association may comply with this section or section
20 514B-152, 514B-153, or 514B-154 by making the required



1 documents, records, and information available to unit owners or
2 owners' authorized agents for download through an internet site,
3 at the option of each unit owner or owner's authorized agent and
4 at no cost to the unit owner or owner's authorized agent.

5 (f) Any fee charged to a unit owner or owner's authorized
6 agent to obtain copies of the association's documents, records,
7 and information, whether maintained, kept, or required to be
8 provided pursuant to this section or section 514B-152, 514B-153,
9 or 514B-154, shall be reasonable; provided that a reasonable fee
10 shall include administrative and duplicating costs and shall not
11 exceed \$1 per page, or portion thereof, except that the fee for
12 pages exceeding eight and one-half inches by fourteen inches may
13 exceed \$1 per page.

14 (g) Copies of the items in subsection (a) shall be
15 provided to the complaints & enforcement officer no later than
16 thirty days after receipt of the complaints and enforcement
17 officer's request or as determined by the complaints and
18 enforcement officer upon the showing of good cause; provided
19 that if the complaints and enforcement officer is denied access
20 to any item in subsection (a), the complaints and enforcement



1 officer may request the commission to conduct an investigation
2 of the matter pursuant to section 514B-65.

3 [~~g~~] (h) This section shall apply to condominiums
4 organized under chapter 514A or 514B.

5 [~~h~~] (i) Nothing in this section shall be construed to
6 create any new requirements for the release of documents,
7 records, or information."

8 SECTION 12. Section 514B-157, Hawaii Revised Statutes, is
9 amended to read as follows:

10 "[~~§~~514B-157[~~§~~] **Attorneys' fees, delinquent assessments,**
11 **and expenses of enforcement.** (a) Fees for attorneys' services
12 incurred by a board shall not be reimbursed by individual unit
13 owners when the services are for the purposes of:

14 (1) Responding to written or oral inquiries, comments, or
15 complaints by unit owners regarding condominium
16 operations, property usage, board fiduciary duties,
17 common elements, and resident actions;

18 (2) Expressing unit owners' intentions to challenge the
19 existing declaration, bylaws, and rules of the
20 association; or



1 (3) Participation in criminal defense resulting from unit
2 owners' allegations of wrongdoing based on the board's
3 performance of fiduciary responsibilities.

4 [~~a~~] (b) All costs and expenses, including reasonable
5 attorneys' fees, incurred by or on behalf of the association
6 for:

7 (1) Collecting any delinquent assessments against any
8 owner's unit;

9 (2) Foreclosing any lien thereon; or

10 (3) Enforcing any provision of the declaration, bylaws,
11 house rules, and this chapter, or the rules of the
12 real estate commission;

13 against an owner, occupant, tenant, employee of an owner, or any
14 other person who may in any manner use the property, shall be
15 promptly paid on demand to the association by such person or
16 persons; provided that if the claims upon which the association
17 takes any action are not substantiated, all costs and expenses,
18 including reasonable attorneys' fees, incurred by any such
19 person or persons as a result of the action of the association,
20 shall be promptly paid on demand to such person or persons by



1 the association~~[+]~~; provided further that if a unit owner
2 initiates an investigation with the office of the condominium
3 complaints and enforcement, costs and expenses for the
4 investigation shall be suspended until the complaints and
5 enforcement officer completes the investigation and issues a
6 recommendation on the matter.

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

- 14 (1) The owner first shall have demanded and allowed
15 reasonable time for the board to pursue such
16 enforcement; or
- 17 (2) The owner demonstrates to the satisfaction of the
18 court that a demand for enforcement made to the board
19 would have been fruitless.



1 If any claim by an owner is not substantiated in any court
2 action against an association, any of its officers or directors,
3 or its board to enforce any provision of the declaration,
4 bylaws, house rules, or this chapter, then all reasonable and
5 necessary expenses, costs, and attorneys' fees incurred by an
6 association shall be awarded to the association, unless before
7 filing the action in court the owner has first submitted the
8 claim to mediation, or to arbitration under subpart D, and made
9 a good faith effort to resolve the dispute under any of those
10 procedures. Plaintiff condominium unit owner did not "incur"
11 attorneys' fees and costs in owner's action against defendant
12 condominium association and was therefore not entitled to
13 attorneys' fees and costs beyond the portion of the total amount
14 requested that plaintiff paid where law firm representing
15 plaintiff's billing statements were sent to a third party and
16 there was no agreement with law firm contractually binding
17 plaintiff to pay those fees and costs; in order for plaintiff
18 condominium unit owner to have "incurred" attorneys' fees and
19 costs under subsection (b) in an action against defendant
20 condominium association, plaintiff must have paid or be legally



1 obligated to pay the fees and costs to the law firm representing
2 plaintiff."

3 SECTION 13. Section 514B-161, Hawaii Revised Statutes, is
4 amended by amending subsection (a) to read as follows:

5 "(a) If an apartment owner or the board of directors
6 requests mediation of a dispute involving the interpretation or
7 enforcement of the association of apartment owners' declaration,
8 bylaws, or house rules, the other party in the dispute shall be
9 required to participate in mediation. Either party may request
10 guidance regarding the mediation process from the office of
11 condominium complaints and enforcement. Each party shall be
12 wholly responsible for its own costs of participating in
13 mediation, unless both parties agree that one party shall pay
14 all or a specified portion of the mediation costs[-] as
15 determined by the complaints and enforcement officer. If a party
16 refuses to participate in the mediation of a particular dispute,
17 a court may take this refusal into consideration when awarding
18 expenses, costs, and attorneys' fees."

19 SECTION 14. Section 514B-162, Hawaii Revised Statutes, is
20 amended by amending subsection (a) to read as follows:



1 "(a) At the request of any party, any dispute concerning
2 or involving one or more unit owners and an association, its
3 board, managing agent, or one or more other unit owners relating
4 to the interpretation, application, or enforcement of this
5 chapter or the association's declaration, bylaws, or house rules
6 adopted in accordance with its bylaws shall be submitted to
7 arbitration. Either party may request informational assistance
8 regarding the arbitration from the office of complaints and
9 enforcement. The arbitration shall be conducted, unless
10 otherwise agreed by the parties, in accordance with the rules
11 adopted by the commission and of chapter 658A; provided that the
12 rules of the arbitration service conducting the arbitration
13 shall be used until the commission adopts its rules; provided
14 further that where any arbitration rule conflicts with chapter
15 658A, chapter 658A shall prevail; and provided further that
16 notwithstanding any rule to the contrary, the arbitrator shall
17 conduct the proceedings in a manner [~~which~~] that affords
18 substantial justice to all parties. The arbitrator shall be
19 bound by rules of substantive law and shall not be bound by
20 rules of evidence, whether or not set out by statute, except for



1 provisions relating to privileged communications. The
2 arbitrator shall permit discovery as provided for in the Hawaii
3 rules of civil procedure; provided that the arbitrator may
4 restrict the scope of [~~such~~] the discovery for good cause to
5 avoid excessive delay and costs to the parties or the arbitrator
6 may refer any matter involving discovery to the circuit court
7 for disposition in accordance with the Hawaii rules of civil
8 procedure then in effect."

9 SECTION 15. There is appropriated out of the condominium
10 education trust fund the sum of \$ or so much thereof
11 as may be necessary for fiscal year 2017-2018 for deposit into
12 the office of condominium complaints and enforcement special
13 fund.

14 SECTION 16. There is appropriated out of the condominium
15 office of condominium complaints and enforcement special fund
16 the sum of \$ or so much thereof as may be necessary
17 for fiscal year 2017-2018 for the administrative costs
18 associated with the establishment of the office of condominium
19 complaints and enforcement within the department of the attorney
20 general, including the hiring of necessary staff.



S.B. NO. 1139

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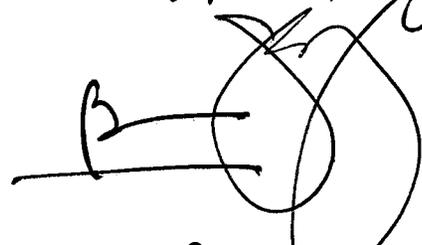
PART III

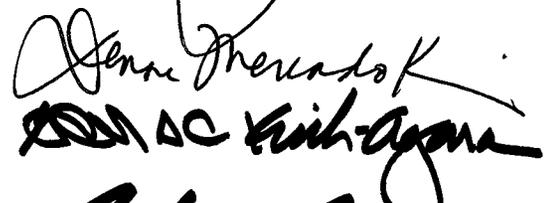
SECTION 18. In codifying the new sections added by section 1 of this Act, the revisor of statutes shall substitute appropriate section numbers for the letters used in designating the new sections in this Act.

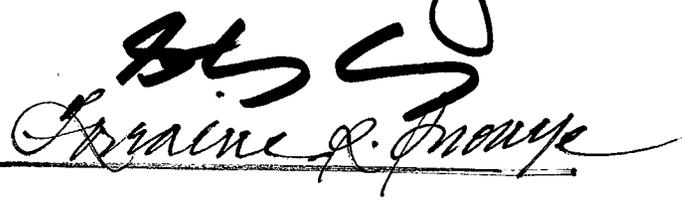
SECTION 19. Statutory material to be repealed is bracketed and stricken. New statutory material is underscored.

SECTION 20. This Act shall take effect on January 1, 2018; provided that sections 15, 16, and 17 shall take effect on July 1, 2017.

INTRODUCED BY: 




Gene Hernandez
SENATOR


Christine R. Franke



S.B. NO. 1139

Report Title:

Condominiums; Disputes; Office; Attorney General; Appropriation

Description:

Establishes an Office of Condominium Complaints and Enforcement in the Department of the Attorney General to intervene in condominium disputes. Requires Legislative Reference Bureau to study extent of condominium disputes and efficacy of the Office of Condominium Complaints and Enforcement. Appropriates money.

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

