
A BILL FOR AN ACT

RELATING TO HOMEOWNER ASSOCIATIONS.

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

PART I

1
2 SECTION 1. The legislature finds that while homeowner
3 association self-governance can be successful, there have been
4 many cases of abuse of power and other acts of malfeasance by
5 certain association boards, association management, managing
6 agents, and association attorneys. This is further evidenced by
7 public statements from leading insurance professionals that
8 Hawaii has the nation's highest number of association directors'
9 and officers' liability insurance claims, assertions that are
10 more alarming because Hawaii has a disproportionately small
11 number of homeowners associations compared to other states.

12 The purpose of this Act is to establish an ombudsman's
13 office for homeowner associations to address and resolve
14 disputes involving homeowners and their associations.



1 PART II

2 SECTION 2. The Hawaii Revised Statutes is amended by
3 adding a new chapter to be appropriately designated and to read
4 as follows:

5 "CHAPTER
6 OMBUDSMAN'S OFFICE FOR HOMEOWNER ASSOCIATIONS

7 § -1 Definitions. As used in this chapter:

8 "Board", "board of directors", or "homeowner association
9 board" means the body, regardless of name, designated in the
10 declaration or bylaws to act on behalf of a condominium
11 association; the board of directors of a cooperative housing
12 corporation; or the executive board or other body, regardless of
13 name, designated in a planned community association's
14 association documents to act on behalf of the planned community
15 association.

16 "Complaints and enforcement officer" means the complaints
17 and enforcement officer established pursuant to section -3.

18 "Department" means the department of commerce and consumer
19 affairs.

20 "Director" means the director of commerce and consumer
21 affairs.



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1 "Homeowner association" refers collectively to the
2 applicable association representing unit owners of a condominium
3 under chapter 514B, cooperative housing corporation under
4 chapter 421I, or planned community association under chapter
5 421J.

6 "Homeowner association laws" refers collectively to the
7 laws governing associations representing unit owners of
8 condominiums under chapter 514B, cooperative housing
9 corporations under chapter 421I, and planned community
10 associations under chapter 421J.

11 "Intake specialist" means the intake specialist established
12 pursuant to section -3.

13 "Ombudsman" means the association ombudsman appointed
14 pursuant to section -2.

15 "Ombudsman's office" means the ombudsman's office for
16 homeowner associations established pursuant to section -2.

17 "Unit owner" means an owner of property governed by a
18 condominium association or planned community association or a
19 tenant shareholder of property governed by a cooperative housing
20 corporation.



1 § -2 Ombudsman's office for homeowner associations
2 established; association ombudsman; criteria for ombudsman. (a)
3 There is established within the department an ombudsman's office
4 for homeowner associations. The ombudsman's office for
5 homeowner associations shall be headed by the association
6 ombudsman, who shall be appointed by the director with the
7 approval of the governor.

8 (b) The ombudsman shall have been admitted to practice law
9 before the Hawaii supreme court and shall have experience in
10 Hawaii real estate, homeowner association laws, and dispute
11 resolution. The ombudsman shall not:

- 12 (1) Engage or have been engaged within the past two years
13 in any other business or profession that directly or
14 indirectly relates to or conflicts with the work of
15 the ombudsman's office;
- 16 (2) Serve as the representative, executive, officer, or
17 employee of any political party, executive committee,
18 or other governing body of a political party;
- 19 (3) Receive remuneration for activities on behalf of any
20 candidate for public office;



- 1 (4) Engage in soliciting votes or other activities on
2 behalf of a candidate for public office; or
3 (5) Become a candidate for election to public office
4 unless the ombudsman first resigns from the
5 ombudsman's office.

6 The ombudsman shall be exempt from chapter 76.

7 **§ -3 Personnel; salary; benefits.** (a) The ombudsman
8 shall employ professional and clerical staff as necessary for
9 the efficient operation of the office. The ombudsman may
10 appoint persons who have been admitted to practice law before
11 the Hawaii supreme court as staff without regard to chapter 76.
12 All other employees shall be appointed by the ombudsman in
13 accordance with chapter 76.

14 (b) The ombudsman shall appoint complaints and enforcement
15 officers who have been admitted to practice law before the
16 Hawaii supreme court and have experience in Hawaii real estate,
17 homeowner association laws, and dispute resolution. The
18 complaints and enforcement officers shall be exempt from chapter
19 76.

20 (c) The ombudsman's office shall integrate the existing
21 condominium specialist positions in the department of commerce



1 and consumer affairs into the ombudsman's office as intake
2 specialists for complaints submitted to the ombudsman's office.

3 (d) Personnel and administrative costs of the ombudsman's
4 office shall be funded by the condominium education trust fund
5 and assessments collected for this purpose under chapters 421I
6 and 421J.

7 (e) The salary of the ombudsman shall be determined by the
8 director. The ombudsman, complaints and enforcement officers,
9 intake specialists, and other personnel shall be included in any
10 benefits program generally applicable to officers and employees
11 of the State.

12 **§ -4 Ombudsman; powers and duties; immunity from**
13 **liability.** (a) The ombudsman shall:

14 (1) Have the power to establish rules and procedures for
15 the operation of the office that shall include
16 receiving and processing complaints and requests for
17 dispute intervention; conducting investigations;
18 enforcement, including fines and penalties; and
19 reporting the findings of the office; provided that
20 the ombudsman shall not levy fees for the submission



- 1 or investigation of complaints or requests for dispute
2 intervention;
- 3 (2) Develop educational classes and required
4 certifications for all members of a homeowner
5 association board to ensure that they are aware of
6 their responsibilities and duties and are familiar
7 with this chapter, other relevant statutes and
8 administrative rules, and their governing documents;
- 9 (3) In conjunction with the department, and using funds
10 from the condominium education trust fund and
11 assessments collected for this purpose under chapters
12 421I and 421J, educate the public and entities
13 required to be registered or certified under homeowner
14 association laws;
- 15 (4) Have access to and use of all files and records of the
16 department;
- 17 (5) Act as a liaison between unit owners, homeowner
18 association boards, board members, homeowner
19 association management, managing agents and their
20 employees, and other affected parties;



- 1 (6) Act as a neutral resource for the rights and
2 responsibilities of unit owners, homeowner
3 associations, boards of directors, board members,
4 managers, and any affected parties to encourage and
5 facilitate voluntary meetings with and between these
6 entities when meetings may assist in resolving a
7 dispute prior to any party submitting a formal request
8 for dispute intervention;
- 9 (7) Assist unit owners in understanding their rights and
10 the processes available to them according to the laws
11 and rules governing homeowner associations;
- 12 (8) Respond to general inquiries, make recommendations, or
13 give guidance as necessary to assist unit owners;
- 14 (9) Make available, either separately or through an
15 existing website, or both, information concerning
16 homeowner associations and any additional information
17 the ombudsman may deem appropriate and non-
18 confidential;
- 19 (10) Coordinate and assist in the preparation and adoption
20 of educational and reference material and endeavor to



- 1 make known to the largest possible audience the
2 availability of these resources;
- 3 (11) Receive written requests for dispute intervention;
- 4 (12) Investigate and assist in resolving disputes brought
5 by unit owners, homeowner associations, boards of
6 directors, and board members, pursuant to
7 section -5;
- 8 (13) Investigate acts that may be:
- 9 (A) Contrary to law or a homeowner association's
10 governing rules;
- 11 (B) Unreasonable, unfair, oppressive, retaliatory, or
12 discriminatory as administered or under the
13 circumstances;
- 14 (C) Based on a mistake of fact;
- 15 (D) Based on improper or irrelevant grounds;
- 16 (E) Unaccompanied by an adequate statement of
17 reasons; or
- 18 (F) Otherwise erroneous;
- 19 (14) Subject to the privileges that witnesses have in the
20 courts of the State, have the authority to:



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- 1 (A) Compel at a specified time and place, by a
2 subpoena, the appearance and sworn testimony of
3 any person whom the ombudsman reasonably believes
4 may have information relating to a matter under
5 investigation; and
- 6 (B) Compel any person to produce documents, records,
7 and information the ombudsman reasonably believes
8 may relate to a matter under investigation;
- 9 (15) Be authorized to bring suit in an appropriate state
10 court to enforce the powers in paragraph (14);
- 11 (16) Provide advisory opinions upon request from a unit
12 owner or other affected party;
- 13 (17) Provide recommendations to the director if the
14 ombudsman finds that:
- 15 (A) The matter should be further considered by the
16 department;
- 17 (B) A statute or rule should be amended or repealed;
18 or
- 19 (C) Other action should be taken by the department;
- 20 (18) Within a reasonable time after providing
21 recommendations to the director pursuant to paragraph



- 1 (17), the ombudsman may submit a report to the
2 governor or the legislature or publish the report,
3 including any reply by the department, and notify the
4 complainant of the actions taken by the ombudsman and
5 the department;
- 6 (19) Ensure that homeowner association members have access
7 to the services provided through the ombudsman's
8 office and that homeowner association members receive
9 responses from the ombudsman's office within thirty
10 days of the member's inquiry;
- 11 (20) Maintain publicly available data on inquiries and
12 complaints received, types of assistance requested,
13 notices of final decisions and actions taken, and
14 disposition of matters;
- 15 (21) Monitor changes in federal and state laws relating to
16 homeowner associations;
- 17 (22) Assist unit owners with disputes concerning homeowner
18 association elections or meetings, including
19 recommending that the department pursue an enforcement
20 action in any matter where the ombudsman has



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- 1 reasonable cause to believe that election misconduct
2 has occurred, pursuant to section -10;
- 3 (23) Have the authority to remove from the board any board
4 member of a homeowner association who is found to have
5 committed wilful misconduct in violation of any laws
6 or the homeowner association's governing documents;
- 7 (24) At least twenty days prior to the convening of each
8 regular legislative session, submit to the legislature
9 an annual report that includes:
- 10 (A) For the previous fiscal year, the number and
11 types of:
- 12 (i) Requests submitted to the ombudsman's
13 office; and
- 14 (ii) The number and nature of the requests
15 disposed; and
- 16 (B) Suggestions for policy or legislation the
17 ombudsman's office deems necessary to more
18 quickly and efficiently resolve disputes
19 involving unit owners; and
- 20 (25) Adopt rules pursuant to chapter 91 necessary to carry
21 out the purposes of this chapter.



1 (b) No proceeding or decision of the ombudsman may be
2 reviewed by any court unless the proceeding or decision
3 contravenes this chapter. The ombudsman shall have the same
4 immunities from civil and criminal liability as a judge of the
5 State. The ombudsman and the staff of the ombudsman's office
6 shall not testify in any court concerning matters coming to
7 their attention in the exercise of their official duties except
8 as may be necessary to enforce this chapter.

9 **§ -5 Request for dispute intervention.** (a) Except as
10 otherwise provided in this section, a unit owner or homeowner
11 association, by its board members, who is a party to a dispute
12 involving the interpretation or enforcement of the homeowner
13 association's governing documents, including the declaration,
14 bylaws, and house rules; chapter 514B, 421I, or 421J, as
15 applicable; or any other law the homeowner association is
16 obligated to follow, may submit with the ombudsman's office a
17 written request for dispute intervention setting forth the facts
18 forming the basis of the dispute.

19 (b) Simultaneous with the submission of a dispute
20 intervention request, a unit owner shall provide the homeowner
21 association board, homeowner association management, or managing



1 agent a copy of the request for dispute intervention. The
2 notice shall be sent to the addressee by certified mail, return
3 receipt requested, or by hand delivery with confirmation of
4 delivery. The notice shall specify in reasonable detail:

5 (1) The nature of the dispute;

6 (2) Any violations of chapter 514B, 421I, or 421J, as
7 applicable, the homeowner association governing
8 documents, or any other law or rule the homeowner
9 association is obligated to follow;

10 (3) Any alleged damages that resulted from the dispute;
11 and

12 (4) Any proposed corrective action to resolve the dispute.

13 (c) A dispute intervention request submitted to the
14 ombudsman's office pursuant to this section shall be on a form
15 prescribed by the ombudsman's office and accompanied by an
16 explanation of:

17 (1) How the respondent has been given a reasonable
18 opportunity to correct the dispute; and

19 (2) The reasonable efforts made by the petitioner to
20 resolve the dispute.



1 (d) Legal representation shall not be required for dispute
2 intervention by the ombudsman's office. Unit owners shall not
3 be assessed any legal fees incurred by the homeowner
4 association, board, board members, managing agent, or other
5 parties as a result of a dispute intervention request submitted
6 to the ombudsman's office.

7 **§ -6 Enforcement by complaints and enforcement officers;**
8 **dispute resolution assistance.** (a) Upon receipt of a dispute
9 intervention request pursuant to section -5, the complaints
10 and enforcement officer shall open an investigation into the
11 dispute.

12 (b) The complaints and enforcement officer may interview
13 parties and witnesses involved in the dispute and request the
14 production of documents, records, and information pursuant to
15 section 514B-154.5, or other evidence or documents that would be
16 reasonably helpful in resolving the dispute. Participation by
17 the complainant, board members, and the board shall be
18 mandatory. A unit owner or board member who refuses to
19 participate shall be subject to penalties and fines to be
20 determined by the ombudsman pursuant to rule adopted under
21 chapter 91. If the board determines not to participate, each



1 board member voting not to participate shall be considered in
2 violation of this chapter, shall be personally assessed a
3 monetary fine, and may be removed from the board.

4 (c) The complaints and enforcement officer shall make
5 recommendations, give guidance, or issue an advisory opinion or
6 decision to the unit owner or homeowner association as the
7 complaints and enforcement officer deems necessary.

8 (d) If the complaints and enforcement officer determines
9 that a homeowner association or board is at fault in a dispute,
10 the homeowner association or board shall be responsible for any
11 legal fees, costs, expenses, interest, or fines levied against
12 the unit owner involved in the dispute.

13 (e) The complaints and enforcement officer may impose a
14 minimum fine of \$250 against any person who knowingly submits
15 false or fraudulent information to the ombudsman's office,
16 wilfully hinders the lawful actions of the ombudsman or the
17 staff of the ombudsman's office, or wilfully refuses to comply
18 with the lawful demands of the ombudsman or the staff of the
19 ombudsman's office.

20 (f) If the parties are unable to reach an agreement under
21 this section or if a party does not agree with the decision of



1 the complaints and enforcement officer, a party may request a
2 contested case hearing with the ombudsman's office that shall be
3 presided over by the ombudsman. Participation in a contested
4 case hearing by the complainant, board members, and the board
5 shall be mandatory.

6 (g) Any party who wishes to request a contested case
7 hearing shall submit a written request with the ombudsman's
8 office within thirty days after receipt of a copy of the
9 complaints and enforcement officer's decision.

10 **§ -7 Contested case hearing.** (a) A contested case
11 hearing shall be conducted by the ombudsman pursuant to chapter
12 91 and any rules adopted by the ombudsman's office; provided
13 that if there is no dispute as to the facts involved in a
14 particular matter, the ombudsman may permit the parties to
15 proceed by memoranda of law in lieu of a hearing, unless the
16 procedure would unduly burden any party or would otherwise not
17 serve the ends of justice.

18 (b) The ombudsman shall not be bound by the rules of
19 evidence when conducting a hearing to determine whether a
20 violation of this chapter has occurred. The standard of proof
21 required shall be a preponderance of the evidence.



1 (c) A record shall be made of the proceeding.

2 (d) All parties shall be afforded a full opportunity to
3 engage in discovery and present evidence and argument on the
4 issues involved.

5 (e) If a hearing is held or a review by memoranda of law
6 is conducted, a preliminary decision shall be rendered by the
7 ombudsman's office and promptly delivered to each party by
8 certified mail. If any party objects to the decision or any
9 part of the decision, that party shall submit written exceptions
10 to the ombudsman's office within fifteen days after receipt of
11 the preliminary decision.

12 (f) As expeditiously as possible after the close of the
13 hearing but not before any party adversely affected has had the
14 opportunity to submit a written exception, the ombudsman shall
15 issue a final decision together with separate findings of fact
16 and conclusions of law regarding whether a violation of this
17 part has occurred. Any final decision made by the ombudsman
18 shall be binding on all parties.

19 **§ -8 Fines; fees.** Any fine or fee collected pursuant to
20 this chapter shall be deposited into the ombudsman's office
21 special fund established under section -9.



1 **§ -9 Ombudsman's office special fund.** (a) There is
2 established an ombudsman's office special fund into which shall
3 be deposited the following moneys:

4 (1) Administrative penalties, fines, and other charges
5 collected under this chapter or any rule adopted
6 pursuant to this chapter;

7 (2) One hundred per cent of all fees required by chapter
8 514B to be deposited into the condominium education
9 trust fund;

10 (3) Fees and assessments collected for administrative
11 costs, personnel, and related equipment and materials
12 of the ombudsman's office under chapters 421I and
13 421J.

14 (b) All interest earned or accrued on moneys deposited
15 into the ombudsman's office special fund shall become a part of
16 the fund.

17 (c) The ombudsman's office shall adopt rules under chapter
18 91 for the purposes of this section.

19 **§ -10 Homeowner association election monitoring.**

20 Fifteen per cent of the total common interests in a homeowner
21 association or six unit owners, whichever is greater, may



1 petition the ombudsman to appoint an election monitor to attend
2 the annual meeting of the unit owners and oversee the election
3 of directors. The ombudsman shall appoint an employee of the
4 ombudsman's office, a person specializing in homeowner
5 association election monitoring, or an attorney licensed to
6 practice in the State as the election monitor. All costs
7 associated with the election monitoring process shall be paid by
8 the homeowner association. The ombudsman's office shall adopt
9 rules establishing procedures for the appointment of election
10 monitors and the scope and extent of the monitor's role in the
11 election process."

12 PART III

13 SECTION 3. Chapter 421I, Hawaii Revised Statutes, is
14 amended by adding two new sections to be appropriately
15 designated and to read as follows:

16 "**§421I-A Board members; education requirement.** Every
17 existing member of the board of directors shall take the
18 educational classes established by the ombudsman and obtain a
19 certificate of satisfactory completion within three months of
20 the classes being made available by the ombudsman. Every new
21 member of the board of directors shall take the educational



1 classes established by the ombudsman and obtain a certificate of
2 satisfactory completion within three months of acceptance to the
3 board. The classes and certification requirement shall be
4 structured to ensure the member is aware of the member's
5 responsibilities and duties and familiar with this chapter,
6 other relevant statutes and administrative rules, and the
7 corporation's governing documents. The educational classes
8 shall be completed by each board member at least once every
9 three years. The board members' certificates of satisfactory
10 completion shall be available for inspection by members of the
11 applicable corporation.

12 **§421I-B Assessments for ombudsman's office.** The
13 corporation shall collect as a common expense of its tenant
14 shareholders an assessment for administrative, personnel, and
15 related equipment and materials costs of the ombudsman's office,
16 to be borne proportionately with condominium associations and
17 planned community associations, the share of which shall be
18 determined by the department of commerce and consumer affairs.
19 All assessments collected under this section shall be deposited
20 into the ombudsman's office special fund established under
21 section -9."



1 SECTION 4. Section 421I-1, Hawaii Revised Statutes, is
2 amended to read as follows:

3 "~~[+]§421I-1[+]—Cooperative housing corporation, defined.~~]

4 **Definitions.** As used in this chapter, unless otherwise
5 indicated by the context[,—"corporation"]:

6 "Corporation" means a cooperative housing corporation that:

- 7 (1) Has one and only one class of stock outstanding;
- 8 (2) Allows each tenant shareholder to occupy a dwelling
9 unit for dwelling purposes solely by reason of the
10 tenant shareholder's ownership of stock in the
11 corporation;
- 12 (3) Does not allow a shareholder to receive, either
13 conditionally or unconditionally, any distributions
14 from the corporation except when there is a complete
15 or partial liquidation of the corporation; provided
16 that this paragraph does not apply to earnings and
17 profits of the corporation; and
- 18 (4) Has eighty per cent or more of the gross income for
19 the taxable year in which taxes are paid or incurred
20 pursuant to 26 United States Code section 216(A)
21 derived from tenant shareholders.



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1 "Ombudsman's office" means the ombudsman's office for
2 homeowner associations established pursuant to section -2."

3 SECTION 5. Section 421I-3, Hawaii Revised Statutes, is
4 amended by amending subsections (a) and (b) to read as follows:

5 "(a) A meeting of the corporation for the purpose of
6 electing the board of directors shall be held [~~not~~] no later
7 than one hundred eighty days after the first conveyance of a
8 dwelling unit to a shareholder, if at least forty per cent of
9 the dwelling units have been conveyed by that time. If forty
10 per cent of the dwelling units have not been conveyed within one
11 year after the first conveyance, the meeting of the corporation
12 may be held upon the call of the owners of at least ten per cent
13 of the shares by a petition presented to the secretary of the
14 corporation.

15 (b) Every member of the board of directors shall be:

16 (1) A shareholder of the [~~cooperation,~~] corporation;

17 (2) A spouse of a shareholder; or

18 (3) A trust beneficiary, if the shareholder is a trustee."

19 SECTION 6. Section 421I-6, Hawaii Revised Statutes, is
20 amended by amending subsections (c) and (d) to read as follows:



1 "(c) Financial statements, general ledgers, accounts
2 receivable ledgers, accounts payable ledgers, check ledgers,
3 insurance policies, contracts, invoices of the corporation for
4 the current and prior year, and any documents regarding
5 delinquencies of ninety days or more shall be available for
6 examination by shareholders at no cost and at convenient hours
7 at a place designated by the board; provided that shareholders
8 shall pay for administrative costs associated with examinations
9 in excess of [~~eight~~] twenty hours per year.

10 The board may require shareholders to furnish the
11 corporation with an affidavit stating that the information is
12 requested in good faith for the protection of the interests of
13 the corporation, its shareholders, or both.

14 Copies of these items shall be provided to any shareholder
15 upon the shareholder's request, if the shareholder pays a
16 reasonable fee for duplicating, postage, stationery, and other
17 administrative costs associated with handling the request.

18 (d) Shareholders may view proxies, tally sheets, ballots,
19 shareholders' check-in lists, and the certificate of election
20 for a period of thirty days following any corporation meeting;



1 provided that shareholders shall pay for administrative costs in
2 excess of [~~eight~~] twenty hours per year.

3 The board may require shareholders to furnish to the
4 corporation an affidavit stating that the information is
5 requested in good faith for the protection of the interest of
6 the corporation, its shareholders, or both.

7 Proxies and ballots may be destroyed following the
8 thirty-day period. Copies of tally sheets, shareholders'
9 check-in lists, and the certificates of election from the most
10 recent corporation meeting shall be provided to any shareholder
11 upon the shareholder's request, if the shareholder pays a
12 reasonable fee for duplicating, postage, stationery, and other
13 administrative costs associated with handling the request."

14 SECTION 7. Section 421I-8, Hawaii Revised Statutes, is
15 amended by amending subsection (b) to read as follows:

16 "(b) As used in this section, "assessments for common
17 expenses" means any amounts collected from shareholders
18 [~~pursuant~~]:

19 (1) Pursuant to the terms of the corporation's bylaws,
20 articles of incorporation, or proprietary leases, for
21 the operation, maintenance, management, repair,



1 replacement, and improvement of the land, buildings,
 2 and any other real or personal property owned or
 3 leased by the corporation[-]; and

4 (2) For costs associated with the ombudsman's office
 5 pursuant to section 421I-B."

6 SECTION 8. Section 421I-9, Hawaii Revised Statutes, is
 7 amended to read as follows:

8 "~~§421I-9 [Mediation and arbitration of disputes.]~~ Dispute
 9 intervention. At the request of any party, any dispute
 10 concerning or involving one or more shareholders and a
 11 corporation, its board of directors, managing agent, resident
 12 manager, or one or more other shareholders relating to the
 13 interpretation, application, or enforcement of this chapter or
 14 the corporation's articles of incorporation, bylaws, or rules
 15 adopted in accordance with its bylaws shall be submitted [~~first~~
 16 ~~to mediation. When all reasonable efforts for mediation have~~
 17 ~~been made and the dispute is not settled either in conference~~
 18 ~~between the parties or through mediation, the dispute shall be~~
 19 ~~submitted to arbitration in the same manner and subject to the~~
 20 ~~same requirements, to the extent practicable, which now apply to~~
 21 ~~condominiums under section 514B-162.] to the ombudsman's office~~



1 as a request for dispute intervention pursuant to section -5.
2 The process for dispute intervention under
3 sections -5, -6, and -7 shall thereafter apply."

4 SECTION 9. Section 421I-10, Hawaii Revised Statutes, is
5 amended to read as follows:

6 "[+]§421I-10[+] **Applicability of other laws.** Nothing in
7 this chapter shall be construed to relieve any corporation from
8 compliance with or being subject to any other applicable law[-],
9 including compliance with any applicable requirements of the
10 ombudsman's office for homeowner associations."

11 PART IV

12 SECTION 10. Chapter 421J, Hawaii Revised Statutes, is
13 amended by adding two new sections to be appropriately
14 designated and to read as follows:

15 "§421J- **Board members; education requirement.** Every
16 existing member of the board of directors shall take the
17 educational classes established by the ombudsman and obtain a
18 certificate of satisfactory completion within three months of
19 the classes being made available by the ombudsman. Every new
20 member of the board of directors shall take the educational
21 classes established by the ombudsman and obtain a certificate of



1 satisfactory completion within three months of acceptance to the
2 board. The classes and certification requirement shall be
3 structured to ensure the member is aware of the member's
4 responsibilities and duties and familiar with this chapter,
5 other relevant statutes and administrative rules, and the
6 corporation's governing documents. The educational classes
7 shall be completed by each board member at least once every
8 three years. The board members' certificates of satisfactory
9 completion shall be available for inspection by members of the
10 applicable association.

11 §421J- Assessments for ombudsman's office. The
12 association shall collect an assessment for administrative
13 costs, personnel, and related equipment and materials of the
14 ombudsman's office, to be borne proportionately with condominium
15 associations and cooperative housing corporations, the share of
16 which shall be determined by the department of commerce and
17 consumer affairs. All assessments collected for this purpose
18 shall be deposited into the ombudsman's office special fund
19 under section -9."



1 SECTION 11. Section 421J-2, Hawaii Revised Statutes, is
2 amended by adding a new definition to be appropriately inserted
3 and to read as follows:

4 "Ombudsman's office" means the ombudsman's office for
5 homeowner associations established pursuant to section -2."

6 SECTION 12. Section 421J-10, Hawaii Revised Statutes, is
7 amended to read as follows:

8 **"[+]§421J-10[+] Attorneys' fees and expenses of**
9 **enforcement.** (a) If the association or the board is involved
10 in a dispute intervention through the ombudsman's office
11 pursuant to section -5, no special assessment related to the
12 dispute, including association attorneys' fees, shall be
13 assessed or collected from unit owners until the ombudsman's
14 office has completed an investigation and rendered a final
15 decision. If the final decision is in favor of the unit owner,
16 any and all assessments, fines, costs, expenses, interest, and
17 legal fees improperly assessed to the unit owner shall be
18 reversed. Any board member of an association who is found to
19 have committed wilful misconduct in violation of any laws or the
20 governing documents shall be removed from the association board
21 by the authority of the ombudsman.



1 [~~(a)~~—All] (b) If no request for dispute intervention is
2 made, all costs and expenses, including reasonable attorneys'
3 fees, incurred by or on behalf of the association for:
4 (1) Collecting any delinquent assessments against any unit
5 or the owner of any unit;
6 (2) Foreclosing any lien on any unit; or
7 (3) Enforcing any provision of the association documents
8 or this chapter;
9 against a member, occupant, tenant, employee of a member, or any
10 other person who in any manner may use the property, shall be
11 promptly paid on demand to the association by such person or
12 persons; provided that if the association is not the prevailing
13 party, all costs and expenses, including reasonable attorneys'
14 fees, incurred by any such person or persons as a result of the
15 action of the association, shall be promptly paid on demand to
16 the person by the association. The reasonableness of any
17 attorney's fees paid by a person or by an association as a
18 result of an action pursuant to paragraph (2) shall be
19 determined by the court.
20 [~~(b)~~] (c) If any member is the prevailing party in any
21 action against an association[~~7~~] pursuant to subsection (b), any



1 of its officers or directors, or its board of directors to
2 enforce any provision of the association documents or this
3 chapter, then all reasonable and necessary expenses, costs, and
4 attorneys' fees incurred by the member shall be awarded to the
5 member; provided that no such award shall be made in any
6 derivative action unless:

- 7 (1) The member first shall have demanded and allowed
8 reasonable time for the board of directors to pursue
9 an enforcement action; or
10 (2) The member demonstrates to the satisfaction of the
11 court that a demand for enforcement made to the board
12 of directors would have been fruitless.

13 If a member is not the prevailing party in any court action
14 against an association[7] pursuant to subsection (b), any of its
15 officers or directors, or its board of directors, to enforce any
16 provision of the association documents or this chapter, then all
17 reasonable and necessary expenses, costs, and attorneys' fees
18 incurred by the association shall be awarded to the association,
19 unless the action was filed in small claims court, or, prior to
20 filing the action in a higher court, the owner has first
21 submitted the claim to [~~mediation~~] dispute intervention pursuant



1 to section 421J-13, and made a good faith effort to resolve the
2 dispute under any of those procedures.

3 ~~[(c) — Nothing]~~ (d) If no request for dispute intervention
4 is made, nothing in this section shall be construed to prohibit
5 the board of directors from authorizing the use of a collection
6 agency."

7 SECTION 13. Section 421J-10.5, Hawaii Revised Statutes, is
8 amended by amending subsections (c) and (d) to read as follows:

9 "(c) Except as provided in section 667-92(c), no unit
10 owner shall withhold any assessment claimed by the association.
11 A unit owner who disputes the amount of an assessment may
12 request a written statement clearly indicating:

- 13 (1) The amount of regular and special assessments included
14 in the assessment, including the due date of each
15 amount claimed;
- 16 (2) The amount of any penalty, late fee, lien filing fee,
17 and any other charge included in the assessment;
- 18 (3) The amount of attorneys' fees and costs, if any,
19 included in the assessment;
- 20 (4) That under Hawaii law, a unit owner has no right to
21 withhold assessments for any reason;



- 1 (5) That a unit owner has a right to [~~demand mediation~~]
2 request a dispute intervention pursuant to -5 to
3 resolve disputes about the amount or validity of an
4 association's assessment; provided that, if required
5 by chapter or the ombudsman, the unit owner
6 immediately pays the assessment in full and keeps
7 assessments current; and
- 8 (6) That payment in full of the assessment does not
9 prevent the unit owner from contesting the assessment
10 or receiving a refund of amounts not owed.
- 11 Nothing in this section shall limit the rights of a unit owner
12 to the protection of all fair debt collection procedures
13 mandated under federal and state law.
- 14 (d) A unit owner who pays an association the full amount
15 claimed by the association may file a claim against the
16 association in court, including small claims court, or require
17 the association to [~~mediate~~] participate in dispute intervention
18 under section 421J-13 to resolve any disputes concerning the
19 amount or validity of the association's claim. If the unit
20 owner and the association are unable to resolve the dispute
21 through [~~mediation,~~] the request for intervention procedures set



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

15 SECTION 14. Section 421J-11, Hawaii Revised Statutes, is
16 amended to read as follows:

17 "[~~+~~§421J-11~~+~~] **Applicability of other laws.** Nothing in
18 this chapter shall be construed to exempt any association or
19 person from compliance with any applicable law, including any
20 applicable requirements of the ombudsman's office, or subject
21 any association or person to any other applicable law; provided



1 that in the event of a conflict between any such law and this
2 chapter, this chapter shall govern."

3 SECTION 15. Section 421J-13, Hawaii Revised Statutes, is
4 amended to read as follows:

5 " ~~[+]§421J-13 []-~~ ~~Mediation of disputes.~~ Dispute
6 intervention. (a) At the request of any party, any dispute
7 concerning or involving one or more members and an association,
8 its board of directors, managing agent, manager, or one or more
9 other members relating to the interpretation, application, or
10 enforcement of this chapter or the association documents, shall
11 ~~[first]~~ be submitted to ~~[mediation.]~~ the ombudsman's office as a
12 request for dispute intervention pursuant to section -5. The
13 process for dispute intervention under sections -5, -6,
14 and -7 shall thereafter apply.

15 (b) Nothing in subsection (a) shall be interpreted to
16 mandate ~~[the mediation]~~ the submittal of a request for dispute
17 intervention to the ombudsman's office of any dispute involving:

- 18 (1) Actions seeking equitable relief involving threatened
19 property damage or the health or safety of association
20 members or any other person;
- 21 (2) Actions to collect assessments;



- 1 (3) Personal injury claims; or
- 2 (4) Actions against an association, a board of directors,
- 3 or one or more directors, officers, agents, employees,
- 4 or other persons for amounts in excess of \$2,500 if
- 5 insurance coverage under a policy of insurance
- 6 procured by the association or its board of directors
- 7 would be unavailable for defense or judgment because
- 8 [~~mediation~~] a request for dispute intervention was
- 9 pursued.

10 [~~(c) If any mediation under this section is not completed~~
 11 ~~within two months from commencement, no further mediation shall~~
 12 ~~be required unless agreed to by the association and the~~
 13 ~~member.] "~~

PART V

15 SECTION 16. 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 members; education requirement. Every
 19 existing member of a board shall take the educational classes
 20 established by the ombudsman and obtain a certificate of
 21 satisfactory completion within three months of the classes being



1 made available by the ombudsman. Every new member of a board
2 shall take the educational classes established by the ombudsman
3 and obtain a certificate of satisfactory completion within three
4 months of acceptance to the board. The classes and
5 certification requirement shall be structured to ensure the
6 member is aware of the member's responsibilities and duties and
7 familiar with this chapter, other relevant statutes and
8 administrative rules, and the condominium's governing documents.
9 The educational classes shall be completed by each board member
10 at least once every three years. The board members'
11 certificates of satisfactory completion shall be available for
12 inspection by members of the applicable association."

13 SECTION 17. Section 514B-3, Hawaii Revised Statutes, is
14 amended by adding three new definitions to be appropriately
15 inserted and to read as follows:

16 "Complaints and enforcement officer" means the complaints
17 and enforcement officer established pursuant to section -3.

18 "Intake specialist" means the intake specialist established
19 pursuant to section -3.

20 "Ombudsman's office" means the ombudsman's office
21 established pursuant to section -2."



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

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

15 SECTION 19. Section 514B-71, Hawaii Revised Statutes, is
16 amended to read as follows:

17 **"§514B-71 Condominium education trust fund.** (a) The
18 commission shall establish a condominium education trust fund
19 that the commission and ombudsman's office shall use for
20 educational purposes. Educational purposes shall include
21 financing or promoting:



- 1 (1) Education and research in the field of condominium
2 management, condominium project registration, and real
3 estate, for the benefit of the public and those
4 required to be registered under this chapter;
- 5 (2) The improvement and more efficient administration of
6 associations; and
- 7 (3) Expeditious and inexpensive procedures for resolving
8 association disputes[+]
- 9 ~~(4) Support for mediation of condominium related disputes,~~
10 ~~and~~
- 11 ~~(5) Support for voluntary binding arbitration between~~
12 ~~parties in condominium related disputes, pursuant to~~
13 ~~section 514B-162.5].~~
- 14 (b) The commission shall use all moneys in the condominium
15 education trust fund for purposes consistent with subsection
16 (a) [+]; provided that one hundred per cent of the fees required
17 by chapter to be deposited into the trust fund shall be
18 transferred to the ombudsman's office special fund established
19 under section -9 for use by the ombudsman's office. Any law
20 to the contrary notwithstanding, the commission may make a
21 finding that a fee adjustment is appropriate and adjust the fees



1 paid by associations to regulate the fund balance to an
2 appropriate level to maintain a reasonable relation between the
3 fees generated and the cost of services rendered by the
4 condominium education trust fund. For the purposes of finding
5 that a fee adjustment is appropriate in order to maintain a
6 reasonable relation between the fees generated and the cost of
7 services rendered by the fund, the commission's review shall
8 include the following:

- 9 (1) Frequency and timing of anticipated revenue to the
10 fund;
- 11 (2) Identification of a reserve amount based on
12 unanticipated revenue reductions and historical
13 expenditures;
- 14 (3) Anticipated expenses paid, including recovery payouts
15 during a biennial budget cycle;
- 16 (4) Unanticipated natural disasters or catastrophic
17 weather events that may increase fund payments; and
18 (5) Any statutory adjustments to fund payout amounts.

19 The balance of the fund shall not exceed a sum determined by the
20 commission. The sum shall be determined by the commission
21 biennially."



1 SECTION 20. Section 514B-72, Hawaii Revised Statutes, is
2 amended by amending subsection (a) to read as follows:

3 "(a) Each project or association with more than five units
4 shall pay to the department of commerce and consumer affairs:

5 (1) A condominium education trust fund fee within one year
6 after the recordation of the purchase of the first
7 unit or within thirty days of the association's first
8 meeting, and thereafter, on or before June 30 of every
9 odd-numbered year, as prescribed by rules adopted
10 pursuant to chapter 91; and

11 (2) Beginning with the July 1, ~~[2015,]~~ 2024, biennium
12 registration, an additional annual condominium
13 education trust fund fee in an amount equal to the
14 product of ~~[\$1.50]~~ \$12.50 times the number of
15 condominium units included in the registered project
16 or association to be dedicated to supporting
17 ~~[mediation or voluntary binding arbitration of~~
18 ~~condominium related disputes.]~~ the ombudsman's office.

19 The additional condominium education trust fund fee
20 shall total ~~[\$3]~~ \$25 per unit until the commission
21 adopts rules pursuant to chapter 91. On June 30 of



1 every odd-numbered year, any unexpended additional
2 amounts paid into the condominium education trust fund
3 [~~and initially dedicated to supporting mediation or~~
4 ~~voluntary binding arbitration of condominium related~~
5 ~~disputes~~], as required by this paragraph, shall be
6 used for educational purposes as provided in section
7 514B-71(a)(1), (2), and (3)."

8 SECTION 21. Section 514B-73, Hawaii Revised Statutes, is
9 amended by amending subsection (b) to read as follows:

10 "(b) The commission and the director of commerce and
11 consumer affairs may use moneys in the condominium education
12 trust fund collected pursuant to section 514B-72, and the rules
13 of the commission to employ necessary personnel not subject to
14 chapter 76 for additional staff support, to provide office
15 space, and to purchase equipment, furniture, and supplies
16 required by the commission to carry out its responsibilities
17 under this part. The ombudsman may use moneys in the
18 condominium education trust fund collected pursuant to section
19 514B-72 for educational purposes, including the establishment of
20 educational classes and the necessary purchase of equipment and



1 supplies required by the ombudsman's office to carry out its
2 responsibilities under chapter ."

3 SECTION 22. Section 514B-104, Hawaii Revised Statutes, is
4 amended by amending subsection (a) to read as follows:

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

- 8 (1) Adopt and amend the declaration, bylaws, and rules and
9 regulations;
- 10 (2) Adopt and amend budgets for revenues, expenditures,
11 and reserves and collect assessments for common
12 expenses from unit owners, subject to section
13 514B-148;
- 14 (3) Hire and discharge managing agents and other
15 independent contractors, agents, and employees;
- 16 (4) Institute, defend, or intervene in litigation or
17 administrative proceedings in its own name on behalf
18 of itself or two or more unit owners on matters
19 affecting the condominium. For the purposes of
20 actions under chapter 480, associations shall be
21 deemed to be "consumers";



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- 1 (5) Make contracts and incur liabilities;
- 2 (6) Regulate the use, maintenance, repair, replacement,
3 and modification of common elements;
- 4 (7) Cause additional improvements to be made as a part of
5 the common elements;
- 6 (8) Acquire, hold, encumber, and convey in its own name
7 any right, title, or interest to real or personal
8 property; provided that:
- 9 (A) Designation of additional areas to be common
10 elements or subject to common expenses after the
11 initial filing of the declaration or bylaws shall
12 require the approval of at least sixty-seven per
13 cent of the unit owners;
- 14 (B) If the developer discloses to the initial buyer
15 in writing that additional areas will be
16 designated as common elements whether pursuant to
17 an incremental or phased project or otherwise,
18 the requirements of this paragraph shall not
19 apply as to those additional areas; and
- 20 (C) The requirements of this paragraph shall not
21 apply to the purchase of a unit for a resident



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1 manager, which may be purchased [~~with the~~
2 ~~approval of the board;~~] through a provision in
3 the bylaws;

4 (9) Subject to section 514B-38, grant easements, leases,
5 licenses, and concessions through or over the common
6 elements and permit encroachments on the common
7 elements;

8 (10) Impose and receive any payments, fees, or charges for
9 the use, rental, or operation of the common elements,
10 other than limited common elements described in
11 section 514B-35(2) and (4), and for services provided
12 to unit owners;

13 (11) Impose charges and penalties, including late fees and
14 interest, for late payment of assessments and levy
15 reasonable fines for violations of the declaration,
16 bylaws, rules, and regulations of the association,
17 either in accordance with the bylaws or, if the bylaws
18 are silent, pursuant to a resolution adopted by the
19 board that establishes a fining procedure that states
20 the basis for the fine and allows an appeal to the
21 board of the fine with notice and an opportunity to be



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- 1 heard and providing that if the fine is paid, the unit
2 owner shall have the right to initiate a dispute
3 resolution process [~~as provided~~] by [~~sections 514B-~~
4 ~~161, 514B-162, or by filing a request for an~~
5 ~~administrative hearing under a pilot program~~
6 ~~administered by the department of commerce and~~
7 ~~consumer affairs,~~] requesting dispute intervention or
8 dispute resolution assistance from the ombudsman's
9 office pursuant to sections -5, -6, and -7;
- 10 (12) Impose reasonable charges for the preparation and
11 recordation of amendments to the declaration,
12 documents requested for resale of units, or statements
13 of unpaid assessments;
- 14 (13) Provide for cumulative voting through a provision in
15 the bylaws;
- 16 (14) Provide for the indemnification of its officers,
17 board, committee members, and agents, and maintain
18 directors' and officers' liability insurance;
- 19 (15) Assign its right to future income, including the right
20 to receive common expense assessments, but only to the
21 extent section 514B-105(e) expressly so provides;



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

18 SECTION 23. 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~~] shall not impose limitations on the



1 power of the association to deal with the developer [~~which~~] that
2 are more restrictive than the limitations imposed on the power
3 of the 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~~] that violates the
9 declaration or bylaws;
- 10 (2) Regulate any behavior in or occupancy of a unit
11 [~~which~~] that violates the declaration or bylaws or
12 unreasonably interferes with the use and enjoyment of
13 other units or the common elements by other unit
14 owners; or
- 15 (3) Restrict the leasing of residential units to the
16 extent those rules are reasonably designed to meet
17 underwriting requirements of institutional lenders who
18 regularly lend money secured by first mortgages on
19 units in condominiums or regularly purchase those
20 mortgages.



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

3 (c) Any payments made by or on behalf of a unit owner
4 shall first be applied to outstanding common expenses that are
5 assessed to all unit owners in proportion to the common interest
6 appurtenant to their respective units. Only after said
7 outstanding common expenses have been paid in full may the
8 payments be applied to other charges owed to the association,
9 including assessed charges to the unit such as ground lease
10 rent, utility sub-metering, storage lockers, parking stalls,
11 boat slips, insurance deductibles, and cable. After these
12 charges are paid, other charges, including unpaid late fees,
13 legal fees, fines, and interest, may be assessed in accordance
14 with an application of payment policy adopted by the board;
15 provided that if a unit owner has designated that any payment is
16 for a specific charge that is not a common expense as described
17 in this subsection, the payment may be applied in accordance
18 with the unit owner's designation even if common expenses remain
19 outstanding.

20 (d) No unit owner who requests legal or other information
21 from the association, the board, the managing agent, or their



1 employees or agents, shall be charged for the reasonable cost of
2 providing the information unless the association notifies the
3 unit owner that it intends to charge the unit owner for the
4 reasonable cost. The association shall notify the unit owner in
5 writing at least ten days prior to incurring the reasonable cost
6 of providing the information, except that no prior notice shall
7 be required to assess the reasonable cost of providing
8 information on delinquent assessments or in connection with
9 proceedings to enforce the law or the association's governing
10 documents.

11 After being notified of the reasonable cost of providing
12 the information, the unit owner may withdraw the request, in
13 writing. A unit owner who withdraws a request for information
14 shall not be charged for the reasonable cost of providing the
15 information.

16 (e) Subject to any approval requirements and spending
17 limits contained in the declaration or bylaws, the association
18 may authorize the board to borrow money for the repair,
19 replacement, maintenance, operation, or administration of the
20 common elements and personal property of the project, or the
21 making of any additions, alterations, and improvements thereto;



1 provided that the board shall make available any reports
2 provided by licensed or certified professionals that document
3 the necessity and urgency of that expenditure, provide to all
4 unit owners a written notice of the purpose and use of the funds
5 ~~[is first sent to all unit owners and owners]~~, and hold a
6 special meeting to discuss the expenditure and review the
7 reports. Owners representing more than fifty per cent of the
8 common interest shall vote ~~[or]~~ and give written consent to the
9 borrowing. In connection with the borrowing, the board may
10 grant to the lender the right to assess and collect monthly or
11 special assessments from the unit owners and to enforce the
12 payment of the assessments or other sums by statutory lien and
13 foreclosure proceedings. The cost of the borrowing, including,
14 without limitation, all principal, interest, commitment fees,
15 and other expenses payable with respect to the borrowing or the
16 enforcement of the obligations under the borrowing, shall be a
17 common expense of the project. For purposes of this section,
18 the financing of insurance premiums by the association within
19 the policy period shall not be deemed a loan and no lease shall
20 be deemed a loan if it provides that at the end of the lease the



1 association may purchase the leased equipment for its fair
2 market value.

3 (f) If the association or the board is involved in a
4 dispute intervention through the ombudsman's office pursuant to
5 section -5, no special assessment related to the dispute,
6 including association attorneys' fees, shall be assessed or
7 collected from unit owners until the ombudsman's office has
8 completed an investigation and rendered a final decision. If
9 the final decision is in favor of the unit owner, any and all
10 assessments, fines, costs, expenses, interest, and legal fees
11 improperly assessed to the unit owner shall be reversed. Any
12 board member who is found to have committed wilful misconduct in
13 violation of any laws or the governing documents shall be
14 removed from the board by the authority of the ombudsman."

15 SECTION 24. Section 514B-106, Hawaii Revised Statutes, is
16 amended by amending subsection (a) to read as follows:

17 "(a) Except as provided in the declaration, the bylaws,
18 subsection (b), or other provisions of this chapter, the board
19 may act in all instances on behalf of the association. In the
20 performance of their duties, officers and members of the board
21 shall owe the association a fiduciary duty and exercise the



1 degree of care and loyalty required of an officer or director of
2 a corporation organized under chapter 414D. Any violation by a
3 board or its officers or members of [~~the mandatory provisions of~~
4 ~~section 514B-161 or 514B-162~~] section -5, -6, or -7 may
5 constitute a violation of the fiduciary duty owed pursuant to
6 this subsection; provided that a board member may avoid
7 liability under this subsection by indicating in writing the
8 board member's disagreement with such board action or rescinding
9 or withdrawing the violating conduct within forty-five days of
10 the occurrence of the initial violation."

11 SECTION 25. Section 514B-146, Hawaii Revised Statutes, is
12 amended as follows:

13 1. By amending subsection (d) to read:

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 (1) Under Hawaii law, a unit owner has no right to
19 withhold common expense assessments for any reason;
- 20 (2) A unit owner has a right to [~~demand mediation or~~
21 ~~arbitration~~] request dispute intervention to resolve



1 disputes about the amount or validity of an
2 association's common expense assessment; provided that
3 the unit owner immediately pays the common expense
4 assessment in full and keeps common expense
5 assessments current;

6 (3) Payment in full of the common expense assessment shall
7 not prevent the owner from contesting the common
8 expense assessment or receiving a refund of amounts
9 not owed; and

10 (4) If the unit owner contests any penalty or fine, late
11 fee, lien filing fee, or other charges included in the
12 assessment, except common expense assessments, the
13 unit owner may [~~demand mediation~~] request dispute
14 intervention as provided in subsection (g) prior to
15 paying those charges."

16 2. By amending subsections (f) and (g) to read:

17 "(f) A unit owner who pays an association the full amount
18 of the common expenses claimed by the association may file in
19 small claims court or require the association to [~~mediate~~]
20 participate in dispute intervention under the ombudsman's office
21 to resolve any disputes concerning the amount or validity of the



1 association's common expense claim. If the unit owner and the
2 association are unable to resolve the dispute through
3 [~~mediation,~~] dispute intervention under the ombudsman's office,
4 either party may [~~file~~] submit a request for [~~arbitration under~~
5 ~~section 514B-162,~~] a contested case hearing; provided that a
6 unit owner may only [~~file~~] submit a request for [~~arbitration~~] a
7 contested case hearing if all amounts claimed by the association
8 as common expenses are paid in full on or before the date of
9 filing. If the unit owner fails to keep all association common
10 expense assessments current during the [~~arbitration,~~] contested
11 case hearing process, the association may ask the [~~arbitrator~~]
12 ombudsman to temporarily suspend the [~~arbitration~~] proceedings.
13 If the unit owner pays all association common expense
14 assessments within thirty days of the date of suspension, the
15 unit owner may ask the [~~arbitrator~~] ombudsman to recommence the
16 [~~arbitration~~] proceedings. If the unit owner fails to pay all
17 association common expense assessments by the end of the
18 thirty-day period, the association may ask the [~~arbitrator~~]
19 ombudsman to dismiss the [~~arbitration~~] proceedings. The unit
20 owner shall be entitled to a refund of any amounts paid as
21 common expenses to the association that are not owed.



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



1 ~~the unit owner for attorneys' fees and costs, penalties or~~
2 ~~finer, late fees, lien filing fees, or any other charge that is~~
3 ~~not imposed on all unit owners as a common expense.] dispute~~
4 intervention. The dispute intervention shall be completed
5 within sixty days of the unit owner's request for dispute
6 intervention; however, a reasonable extension may be provided at
7 the ombudsman's discretion."

8 SECTION 26. Section 514B-146.5, Hawaii Revised Statutes,
9 is amended by amending subsection (a) to read as follows:

10 "(a) Any notice of default and intention to foreclose
11 given by an association under section 667-92(a) shall, in
12 addition to the requirements of that section, also include a
13 statement that the unit owner may request [~~mediation~~] dispute
14 intervention by delivering a written request for [~~mediation~~]
15 dispute intervention to the association by certified mail,
16 return receipt requested, or hand delivery within thirty days
17 after service of a notice of default and intention to foreclose
18 on the unit owner.

19 If the association does not receive a request for
20 [~~mediation~~] dispute intervention within the thirty-day period,
21 the association may proceed with nonjudicial or power of sale



1 foreclosure, subject to all applicable provisions of this
2 chapter and chapter 667. If the association receives a request
3 for [~~mediation,~~] dispute intervention, as set forth in this
4 subsection, from a unit owner within thirty days after service
5 of a notice of default and intention to foreclose upon the unit
6 owner, the association shall agree to [~~mediate~~] dispute
7 intervention and shall be prohibited from proceeding with
8 nonjudicial or power of sale foreclosure until the association
9 has participated in the [~~mediation~~] dispute intervention or the
10 time period for completion of the [~~mediation~~] dispute
11 intervention has elapsed. The [~~mediation~~] dispute intervention
12 shall be completed within sixty days of the date upon which the
13 unit owner delivers a request for [~~mediation upon~~] dispute
14 intervention to the association; provided that if the
15 [~~mediation~~] dispute intervention is not commenced or completed
16 within sixty days or the parties are unable to resolve the
17 dispute by [~~mediation,~~] dispute intervention, the association
18 may proceed with nonjudicial or power of sale foreclosure,
19 subject to all applicable provisions of this chapter and chapter
20 667."



1 SECTION 27. Section 514B-154, Hawaii Revised Statutes, is
2 amended as follows:

3 1. By amending subsections (b) and (c) to read:

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

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

16 (2) Owners shall pay for administrative costs in excess of
17 [~~eight~~] twenty hours per year.

18 Copies of these items shall be provided to any owner upon
19 the owner's request; provided that the owner pays a reasonable
20 fee for duplication, postage, stationery, and other
21 administrative costs associated with handling the request.



1 (c) After any association meeting, and not earlier, unit
2 owners shall be permitted to examine proxies, tally sheets,
3 ballots, owners' check-in lists, and the certificate of
4 election; provided that:

5 (1) Owners shall make a request to examine the documents
6 within thirty days after the association meeting;

7 (2) The board may require owners to furnish to the
8 association a duly executed and acknowledged affidavit
9 stating that the information is requested in good
10 faith for the protection of the interest of the
11 association or its members or both; and

12 (3) Owners shall pay for administrative costs in excess of
13 [~~eight~~] twenty hours per year.

14 The documents may be destroyed ninety days after the
15 association meeting; provided that in the event of a contested
16 election, the documents shall be retained until the contested
17 election is resolved. Copies of tally sheets, owners' check-in
18 lists, and the certificates of election from the most recent
19 association meeting shall be provided to any owner upon the
20 owner's request; provided that the owner pays a reasonable fee



1 for duplicating, postage, stationery, and other administrative
2 costs associated with handling the request."

3 2. By amending subsection (j) to read:

4 "(j) Any fee charged to a member to obtain copies of
5 association records under this section shall be reasonable;
6 provided that a reasonable fee shall include actual
7 administrative and duplicating costs and shall not exceed \$1 per
8 printed page, or portion thereof, except the fee for pages
9 exceeding eight and one-half inches by fourteen inches may
10 exceed \$1 per printed page. Charges for electronic copies of
11 documents shall be limited to reasonable and actual
12 administrative costs and shall first be applied to the twenty
13 free hours allocated to the association. The maximum charge for
14 any electronic document requested shall be \$5."

15 SECTION 28. Section 514B-154.5, Hawaii Revised Statutes,
16 is amended to read as follows:

17 "**§514B-154.5 Association documents to be provided.** (a)
18 Notwithstanding any other provision in the declaration, bylaws,
19 or house rules, if any, the following documents, records, and
20 information, whether maintained, kept, or required to be
21 provided pursuant to this section or section 514B-152, 514B-153,



1 or 514B-154, shall be made available to any unit owner and the
2 owner's authorized agents by the managing agent, resident
3 manager, board through a board member, or the association's
4 representative:

- 5 (1) All financial and other records sufficiently detailed
6 in order to comply with requests for information and
7 disclosures related to the resale of units;
- 8 (2) An accurate copy of the declaration, bylaws, house
9 rules, if any, master lease, if any, a sample original
10 conveyance document, and all public reports and any
11 amendments thereto;
- 12 (3) Detailed, accurate records in chronological order of
13 the receipts and expenditures affecting the common
14 elements, specifying and itemizing the maintenance and
15 repair expenses of the common elements and any other
16 expenses incurred and monthly statements indicating
17 the total current delinquent dollar amount of any
18 unpaid assessments for common expenses;
- 19 (4) All records and the vouchers authorizing the payments
20 and statements kept and maintained at the address of



- 1 the project, or elsewhere within the State as
2 determined by the board, subject to section 514B-152;
- 3 (5) All signed and executed agreements for managing the
4 operation of the property, expressing the agreement of
5 all parties, including but not limited to financial
6 and accounting obligations, services provided, and any
7 compensation arrangements, including any subsequent
8 amendments;
- 9 (6) An accurate and current list of members of the
10 condominium association and the members' current
11 addresses and the names and addresses of the vendees
12 under an agreement of sale, if any. A copy of the
13 list shall be available, at cost, to any unit owner or
14 owner's authorized agent who furnishes to the managing
15 agent, resident manager, or the board a duly executed
16 and acknowledged affidavit stating that the list:
- 17 (A) Shall be used by the unit owner or owner's
18 authorized agent personally and only for the
19 purpose of soliciting votes or proxies or for
20 providing information to other unit owners with
21 respect to association matters; and



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- 1 (B) Shall not be used by the unit owner or owner's
2 authorized agent or furnished to anyone else for
3 any other purpose;
- 4 (7) The association's most current financial statement, at
5 no cost or on twenty-four-hour loan, at a convenient
6 location designated by the board;
- 7 (8) Meeting minutes of the association, pursuant to
8 section 514B-122;
- 9 (9) Meeting minutes of the board, including executive
10 session records of voting results regarding the
11 imposition of special assessments, charges, and fines,
12 including legal fees, pursuant to section 514B-126,
13 which shall be:
- 14 (A) Available for examination by unit owners or
15 owners' authorized agents at no cost or on
16 twenty-four-hour loan at a convenient location at
17 the project, to be determined by the board; or
- 18 (B) Transmitted to any unit owner or owner's
19 authorized agent making a request for the minutes
20 within fifteen days of receipt of the request by



- 1 the owner or owner's authorized agent; provided
2 that:
- 3 (i) The minutes shall be transmitted by mail,
4 electronic mail transmission, or facsimile,
5 by the means indicated by the owner or
6 owner's authorized agent, if the owner or
7 owner's authorized agent indicated a
8 preference at the time of the request; and
- 9 (ii) The owner or owner's authorized agent shall
10 pay a reasonable fee for administrative
11 costs associated with handling the request,
12 subject to section 514B-105(d);
- 13 (10) Financial statements, general ledgers, the accounts
14 receivable ledger, accounts payable ledgers, check
15 ledgers, insurance policies, contracts, and invoices
16 of the association for the duration those records are
17 kept by the association, and any documents regarding
18 delinquencies of ninety days or more shall be
19 available for examination by unit owners or owners'
20 authorized agents at convenient hours at a place
21 designated by the board; provided that:



- 1 (A) The board may require unit owners or owners'
2 authorized agents to furnish to the association a
3 duly executed and acknowledged affidavit stating
4 that the information is requested in good faith
5 for the protection of the interests of the
6 association, its members, or both; and
- 7 (B) Unit owners or owners' authorized agents shall
8 pay for administrative costs in excess of [~~eight~~]
9 twenty hours per year;
- 10 (11) Proxies, tally sheets, ballots, unit owners' check-in
11 lists, and the certificate of election subject to
12 section 514B-154(c);
- 13 (12) Copies of an association's documents, records, and
14 information, whether maintained, kept, or required to
15 be provided pursuant to this section or section
16 514B-152, 514B-153, or 514B-154;
- 17 (13) A copy of the management contract from the entity that
18 manages the operation of the property before the
19 organization of an association;
- 20 (14) Other documents requested by a unit owner or owner's
21 authorized agent in writing; provided that the board



1 shall give written authorization or written refusal
2 with an explanation of the refusal within thirty
3 calendar days of receipt of a request for documents
4 pursuant to this paragraph; and

5 (15) A copy of any contract, written job description, and
6 compensation between the association and any person or
7 entity retained by the association to manage the
8 operation of the property on-site, including but not
9 limited to the general manager, operations manager,
10 resident manager, or site manager; provided that
11 personal information may be redacted from the contract
12 copy, including but not limited to the manager's date
13 of birth, age, signature, social security number,
14 residence address, telephone number, non-business
15 electronic mail address, driver's license number,
16 Hawaii identification card number, bank account
17 number, credit or debit card number, access code or
18 password that would permit access to the manager's
19 financial accounts, or any other information that may
20 be withheld under state or federal law.



1 (b) Subject to section 514B-105(d), copies of the items in
2 subsection (a) shall be provided to any unit owner or owner's
3 authorized agent upon the owner's or owner's authorized agent's
4 request; provided that the owner or owner's authorized agent
5 pays a reasonable fee for duplication, postage, stationery, and
6 other administrative costs associated with handling the request.

7 (c) Notwithstanding any provision in the declaration,
8 bylaws, or house rules providing for another period of time, all
9 documents, records, and information listed under subsection (a),
10 whether maintained, kept, or required to be provided pursuant to
11 this section or section 514B-152, 514B-153, or 514B-154, shall
12 be provided no later than thirty days after receipt of a unit
13 owner's or owner's authorized agent's written request, unless a
14 lesser time is provided pursuant to this section or section
15 514B-152, 514B-153, or 514B-154, and except as provided in
16 subsection (a)(14).

17 (d) Any documents, records, and information, whether
18 maintained, kept, or required to be provided pursuant to this
19 section or section 514B-152, 514B-153, or 514B-154, may be made
20 available electronically to the unit owner or owner's authorized



1 agent if the owner or owner's authorized agent requests such in
2 writing.

3 (e) An association may comply with this section or section
4 514B-152, 514B-153, or 514B-154 by making the required
5 documents, records, and information available to unit owners or
6 owners' authorized agents for download through an internet site,
7 at the option of each unit owner or owner's authorized agent and
8 at no cost to the unit owner or owner's authorized agent.

9 (f) Any fee charged to a unit owner or owner's authorized
10 agent to obtain copies of the association's documents, records,
11 and information, whether maintained, kept, or required to be
12 provided pursuant to this section or section 514B-152, 514B-153,
13 or 514B-154, shall be reasonable; provided that a reasonable fee
14 shall include actual administrative and duplicating costs and
15 shall not exceed \$1 per printed page, or portion thereof, except
16 that the fee for pages exceeding eight and one-half inches by
17 fourteen inches may exceed \$1 per printed page. Charges for
18 electronic copies of documents shall be limited to reasonable
19 and actual administrative costs and shall first be applied to
20 the twenty free hours allocated to the association. The maximum
21 charge for any electronic document requested shall be \$5.



1 (g) Copies of the documents listed in subsection (a) shall
2 be provided to the complaints and enforcement officer or
3 ombudsman no later than thirty days after receipt of the
4 complaints and enforcement officer's request or as determined by
5 the complaints and enforcement officer upon a showing of good
6 cause; provided that if the complaints and enforcement officer
7 or ombudsman is denied access to any item in subsection (a), the
8 complaints and enforcement officer or ombudsman may request the
9 commission to conduct an investigation of the matter pursuant to
10 section 514B-65.

11 [~~g~~] (h) This section shall apply to all condominiums
12 organized under this chapter or any predecessor thereto.

13 [~~h~~] ~~Nothing in this section shall be construed to create~~
14 ~~any new requirements for the release of documents, records, or~~
15 ~~information.] "~~

16 SECTION 29. Section 514B-157, Hawaii Revised Statutes, is
17 amended to read as follows:

18 "~~§~~**514B-157**~~§~~ **Attorneys' fees, delinquent assessments,**
19 **and expenses of enforcement.** (a) Fees for attorneys' services
20 incurred by a board shall not be reimbursed by individual unit
21 owners when the services are for the purposes of:



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- 1 (1) Responding to written or oral inquiries, comments,
2 complaints, or requests for dispute intervention by
3 unit owners regarding condominium operations, property
4 usage, board fiduciary duties, common elements, and
5 resident actions;
- 6 (2) Expressing unit owners' intentions to challenge the
7 existing declaration, bylaws, and rules of the
8 association; or
- 9 (3) Participation in criminal defense resulting from unit
10 owners' allegations of wrongdoing based on the board's
11 performance of fiduciary responsibilities.
- 12 [~~a~~] (b) All costs and expenses, including reasonable
13 attorneys' fees, incurred by or on behalf of the association
14 for:
- 15 (1) Collecting any delinquent assessments against any
16 owner's unit;
- 17 (2) Foreclosing any lien thereon; or
- 18 (3) Enforcing any provision of the declaration, bylaws,
19 house rules, and this chapter, or the rules of the
20 real estate commission;



1 against an owner, occupant, tenant, employee of an owner, or any
2 other person who may in any manner use the property, shall be
3 promptly paid on demand to the association by such person or
4 persons; provided that if the claims upon which the association
5 takes any action are not substantiated, all costs and expenses,
6 including reasonable attorneys' fees, incurred by any such
7 person or persons as a result of the action of the association,
8 shall be promptly paid on demand to such person or persons by
9 the association~~[-]~~; provided further that if a unit owner
10 requests dispute intervention which initiates an investigation
11 with the ombudsman's office, costs and expenses for the
12 investigation shall be suspended until the complaints and
13 enforcement officer completes the investigation and issues a
14 decision on the matter.

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



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

4 (2) The owner demonstrates to the satisfaction of the
5 court that a demand for enforcement made to the board
6 would have been fruitless.

7 If any claim by an owner is not substantiated in any court
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 association shall be awarded to the association, unless before
13 filing the action in court the owner has first submitted the
14 claim to [~~mediation, or to arbitration under subpart D,~~] dispute
15 intervention under the ombudsman's office and made a good faith
16 effort to resolve the dispute [~~under any of those procedures~~]."

17 SECTION 30. Section 514B-163, Hawaii Revised Statutes, is
18 amended to read as follows:

19 "[~~+~~]**§514B-163**[~~+~~] **Trial de novo and appeal.** (a) The
20 submission of any dispute to [~~an arbitration under section~~



1 ~~514B-162]~~ the ombudsman's office shall in no way limit or
2 abridge the right of any party to a trial de novo.

3 (b) Written demand for a trial de novo by any party
4 desiring a trial de novo shall be made upon the other parties
5 within [~~ten~~] sixty days after service of the [~~arbitration award~~]
6 final decision by the ombudsman or the ombudsman's office upon
7 all parties and the trial de novo shall be filed in circuit
8 court within [~~thirty~~] ninety days of the written demand.
9 Failure to meet these deadlines shall preclude a party from
10 demanding a trial de novo.

11 [~~(c) The award of arbitration shall not be made known to~~
12 ~~the trier of fact at a trial de novo.~~]

13 [~~(d)~~] (c) In any trial de novo demanded under this
14 section, if the party demanding a trial de novo does not prevail
15 at trial, the party demanding the trial de novo shall be charged
16 with all reasonable costs, expenses, and attorneys' fees of the
17 trial. When there is more than one party on one or both sides
18 of an action, or more than one issue in dispute, the court shall
19 allocate its award of costs, expenses, and attorneys' fees among
20 the prevailing parties and tax such fees against those



1 nonprevailing parties who demanded a trial de novo in accordance
2 with the principles of equity."

3 SECTION 31. Section 514B-191, Hawaii Revised Statutes, is
4 amended by amending subsection (a) to read as follows:

5 "(a) An association, board, managing agent, resident
6 manager, unit owner, or any person acting on behalf of an
7 association or a unit owner shall not retaliate against a unit
8 owner, board member, managing agent, resident manager, or
9 association employee who, through a lawful action done in an
10 effort to address, prevent, or stop a violation of this chapter
11 or governing documents of the association:

- 12 (1) Complains or otherwise reports an alleged violation;
- 13 (2) Causes a complaint or report of an alleged violation
14 to be filed with the association, the commission, the
15 ombudsman's office, or other appropriate entity;
- 16 (3) Participates in or cooperates with an investigation of
17 a complaint or report filed with the association, the
18 commission, the ombudsman's office, or other
19 appropriate entity;
- 20 (4) Otherwise acts in furtherance of a complaint, report,
21 or investigation concerning an alleged violation; or



1 (5) Exercises or attempts to exercise any right under this
2 chapter or the governing documents of the
3 association."

4 SECTION 32. Section 514B-161, Hawaii Revised Statutes, is
5 repealed.

6 ["~~§514B-161 Mediation.~~ (a) ~~The mediation of a dispute~~
7 ~~between a unit owner and the board, unit owner and the managing~~
8 ~~agent, board members and the board, or directors and managing~~
9 ~~agents and the board shall be mandatory upon written request to~~
10 ~~the other party when:~~

11 ~~(1) The dispute involves the interpretation or enforcement~~
12 ~~of the association's declaration, bylaws, or house~~
13 ~~rules;~~

14 ~~(2) The dispute falls outside the scope of subsection (b);~~

15 ~~(3) The parties have not already mediated the same or a~~
16 ~~substantially similar dispute; and~~

17 ~~(4) An action or an arbitration concerning the dispute has~~
18 ~~not been commenced.~~

19 ~~(b) The mediation of a dispute between a unit owner and~~
20 ~~the board, unit owner and the managing agent, board members and~~



1 ~~the board, or directors and managing agents and the board shall~~
2 ~~not be mandatory when the dispute involves:~~

3 ~~(1) Threatened property damage or the health or safety of~~
4 ~~unit owners or any other person;~~

5 ~~(2) Assessments;~~

6 ~~(3) Personal injury claims; or~~

7 ~~(4) Matters that would affect the availability of any~~
8 ~~coverage pursuant to an insurance policy obtained by~~
9 ~~or on behalf of an association.~~

10 ~~(c) If evaluative mediation is requested in writing by one~~
11 ~~of the parties pursuant to subsection (a), the other party~~
12 ~~cannot choose to do facilitative mediation instead, and any~~
13 ~~attempt to do so shall be treated as a rejection to mediate.~~

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

17 ~~(1) Mediation of the dispute is mandatory pursuant to~~
18 ~~subsection (a);~~

19 ~~(2) A written request for mediation has been delivered to~~
20 ~~and received by the other party; and~~



1 ~~(3) The parties have not agreed to a mediator and a~~
2 ~~mediation date within forty five days after a party~~
3 ~~receives a written request for mediation.~~

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

9 ~~(f) Each party to a mediation shall bear the attorneys'~~
10 ~~fees, costs, and other expenses of preparing for and~~
11 ~~participating in mediation incurred by the party, unless~~
12 ~~otherwise specified in:~~

13 ~~(1) A written agreement providing otherwise that is signed~~
14 ~~by the parties;~~

15 ~~(2) An order of a court in connection with the final~~
16 ~~disposition of a claim that was submitted to~~
17 ~~mediation;~~

18 ~~(3) An award of an arbitrator in connection with the final~~
19 ~~disposition of a claim that was submitted to~~
20 ~~mediation; or~~



- 1 ~~(4) An order of the circuit court in connection with~~
2 ~~compelled mediation in accordance with subsection (e).~~
- 3 ~~(g) Any individual mediation supported with funds from the~~
4 ~~condominium education trust fund pursuant to section 514B-71:~~
- 5 ~~(1) Shall include a fee of \$375 to be paid by each party~~
6 ~~to the mediator;~~
- 7 ~~(2) Shall receive no more from the fund than is~~
8 ~~appropriate under the circumstances, and in no event~~
9 ~~more than \$3,000 total;~~
- 10 ~~(3) May include issues and parties in addition to those~~
11 ~~identified in subsection (a); provided that a unit~~
12 ~~owner or a developer and board are parties to the~~
13 ~~mediation at all times and the unit owner or developer~~
14 ~~and the board mutually consent in writing to the~~
15 ~~addition of the issues and parties; and~~
- 16 ~~(4) May include an evaluation by the mediator of any~~
17 ~~claims presented during the mediation.~~
- 18 ~~(h) A court or an arbitrator with jurisdiction may~~
19 ~~consider a timely request to stay any action or proceeding~~
20 ~~concerning a dispute that would be subject to mediation pursuant~~



1 ~~to subsection (a) in the absence of the action or proceeding,~~
2 ~~and refer the matter to mediation, provided that:~~

3 ~~(1) The court or arbitrator determines that the request is~~
4 ~~made in good faith and a stay would not be prejudicial~~
5 ~~to any party; and~~

6 ~~(2) No stay shall exceed a period of ninety days."]~~

7 SECTION 33. Section 514B-162, Hawaii Revised Statutes, is
8 repealed.

9 ~~["~~§514B-162~~ Arbitration. (a) At the request of any~~
10 ~~party, any dispute concerning or involving one or more unit~~
11 ~~owners and an association, its board, managing agent, or one or~~
12 ~~more other unit owners relating to the interpretation,~~
13 ~~application, or enforcement of this chapter or the association's~~
14 ~~declaration, bylaws, or house rules adopted in accordance with~~
15 ~~its bylaws shall be submitted to arbitration. The arbitration~~
16 ~~shall be conducted, unless otherwise agreed by the parties, in~~
17 ~~accordance with the rules adopted by the commission and of~~
18 ~~chapter 658A; provided that the rules of the arbitration service~~
19 ~~conducting the arbitration shall be used until the commission~~
20 ~~adopts its rules; provided further that where any arbitration~~
21 ~~rule conflicts with chapter 658A, chapter 658A shall prevail;~~



1 ~~and provided further that notwithstanding any rule to the~~
2 ~~contrary, the arbitrator shall conduct the proceedings in a~~
3 ~~manner which affords substantial justice to all parties. The~~
4 ~~arbitrator shall be bound by rules of substantive law and shall~~
5 ~~not be bound by rules of evidence, whether or not set out by~~
6 ~~statute, except for provisions relating to privileged~~
7 ~~communications. The arbitrator shall permit discovery as~~
8 ~~provided for in the Hawaii rules of civil procedure; provided~~
9 ~~that the arbitrator may restrict the scope of such discovery for~~
10 ~~good cause to avoid excessive delay and costs to the parties or~~
11 ~~the arbitrator may refer any matter involving discovery to the~~
12 ~~circuit court for disposition in accordance with the Hawaii~~
13 ~~rules of civil procedure then in effect.~~

14 ~~(b) Nothing in subsection (a) shall be interpreted to~~
15 ~~mandate the arbitration of any dispute involving:~~

- 16 ~~(1) The real estate commission;~~
17 ~~(2) The mortgagee of a mortgage of record;~~
18 ~~(3) The developer, general contractor, subcontractors, or~~
19 ~~design professionals for the project; provided that~~
20 ~~when any person exempted by this paragraph is also a~~
21 ~~unit owner, a director, or managing agent, such person~~



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- 1 ~~in those capacities, shall be subject to the~~
2 ~~provisions of subsection (a),~~
- 3 ~~(4) Actions seeking equitable relief involving threatened~~
4 ~~property damage or the health or safety of unit owners~~
5 ~~or any other person,~~
- 6 ~~(5) Actions to collect assessments which are liens or~~
7 ~~subject to foreclosure; provided that a unit owner who~~
8 ~~pays the full amount of an assessment and fulfills the~~
9 ~~requirements of section 514B 146 shall have the right~~
10 ~~to demand arbitration of the owner's dispute,~~
11 ~~including a dispute about the amount and validity of~~
12 ~~the assessment,~~
- 13 ~~(6) Personal injury claims,~~
- 14 ~~(7) Actions for amounts in excess of \$2,500 against an~~
15 ~~association, a board, or one or more directors,~~
16 ~~officers, agents, employees, or other persons, if~~
17 ~~insurance coverage under a policy or policies procured~~
18 ~~by the association or its board would be unavailable~~
19 ~~because action by arbitration was pursued; or~~



1 ~~(8) Any other cases which are determined, as provided in~~
2 ~~subsection (c), to be unsuitable for disposition by~~
3 ~~arbitration.~~

4 ~~(c) At any time within twenty days of being served with a~~
5 ~~written demand for arbitration, any party so served may apply to~~
6 ~~the circuit court in the judicial circuit in which the~~
7 ~~condominium is located for a determination that the subject~~
8 ~~matter of the dispute is unsuitable for disposition by~~
9 ~~arbitration.~~

10 ~~In determining whether the subject matter of a dispute is~~
11 ~~unsuitable for disposition by arbitration, a court may consider:~~

12 ~~(1) The magnitude of the potential award, or any issue of~~
13 ~~broad public concern raised by the subject matter~~
14 ~~underlying the dispute;~~

15 ~~(2) Problems referred to the court where court regulated~~
16 ~~discovery is necessary;~~

17 ~~(3) The fact that the matter in dispute is a reasonable or~~
18 ~~necessary issue to be resolved in pending litigation~~
19 ~~and involves other matters not covered by or related~~
20 ~~to this chapter;~~



1 ~~(4) The fact that the matter to be arbitrated is only part~~
2 ~~of a dispute involving other parties or issues which~~
3 ~~are not subject to arbitration under this section; and~~

4 ~~(5) Any matters of dispute where disposition by~~
5 ~~arbitration, in the absence of complete judicial~~
6 ~~review, would not afford substantial justice to one or~~
7 ~~more of the parties.~~

8 ~~Any such application to the circuit court shall be made and~~
9 ~~heard in a summary manner and in accordance with procedures for~~
10 ~~the making and hearing of motions. The prevailing party shall~~
11 ~~be awarded its attorneys' fees and costs in an amount not to~~
12 ~~exceed \$200.~~

13 ~~(d) In the event of a dispute as to whether a claim shall~~
14 ~~be excluded from mandatory arbitration under subsection (b)(7),~~
15 ~~any party to an arbitration may file a complaint for declaratory~~
16 ~~relief against the involved insurer or insurers for a~~
17 ~~determination of whether insurance coverage is unavailable due~~
18 ~~to the pursuit of action by arbitration. The complaint shall be~~
19 ~~filed with the circuit court in the judicial circuit in which~~
20 ~~the condominium is located. The insurer or insurers shall file~~
21 ~~an answer to the complaint within twenty days of the date of~~



1 ~~service of the complaint and the issue shall be disposed of by~~
2 ~~the circuit court at a hearing to be held at the earliest~~
3 ~~available date; provided that the hearing shall not be held~~
4 ~~within twenty days from the date of service of the complaint~~
5 ~~upon the insurer or insurers.~~

6 ~~(e) Notwithstanding any provision in this chapter to the~~
7 ~~contrary, the declaration, or the bylaws, the award of any~~
8 ~~costs, expenses, and legal fees by the arbitrator shall be in~~
9 ~~the sole discretion of the arbitrator and the determination of~~
10 ~~costs, expenses, and legal fees shall be binding upon all~~
11 ~~parties.~~

12 ~~(f) The award of the arbitrator shall be in writing and~~
13 ~~acknowledged or proved in like manner as a deed for the~~
14 ~~conveyance of real estate, and shall be served by the arbitrator~~
15 ~~on each of the parties to the arbitration, personally or by~~
16 ~~registered or certified mail. At any time within one year after~~
17 ~~the award is made and served, any party to the arbitration may~~
18 ~~apply to the circuit court of the judicial circuit in which the~~
19 ~~condominium is located for an order confirming the award. The~~
20 ~~court shall grant the order confirming the award pursuant to~~
21 ~~section 658A-22, unless the award is vacated, modified, or~~



1 ~~corrected, as provided in sections 658A-20, 658A-23, and~~
2 ~~658A-24, or a trial de novo is demanded under subsection (h), or~~
3 ~~the award is successfully appealed under subsection (h). The~~
4 ~~record shall be filed with the motion to confirm award, and~~
5 ~~notice of the motion shall be served upon each other party or~~
6 ~~their respective attorneys in the manner required for service of~~
7 ~~notice of a motion.~~

8 ~~(g) Findings of fact and conclusions of law, as requested~~
9 ~~by any party prior to the arbitration hearing, shall be promptly~~
10 ~~provided to the requesting party upon payment of the reasonable~~
11 ~~cost thereof.~~

12 ~~(h) Any party to an arbitration under this section may~~
13 ~~apply to vacate, modify, or correct the arbitration award for~~
14 ~~the grounds set out in chapter 658A. All reasonable costs,~~
15 ~~expenses, and attorneys' fees on appeal shall be charged to the~~
16 ~~nonprevailing party."]~~

17 SECTION 34. Section 514B-162.5, Hawaii Revised Statutes,
18 is repealed.

19 ~~["~~§514B-162.5~~ Voluntary binding arbitration. (a) Any~~
20 ~~parties permitted to mediate condominium related disputes~~
21 ~~pursuant to section 514B-161 may agree to enter into voluntary~~



1 ~~binding arbitration, which may be supported with funds from the~~
2 ~~condominium education trust fund pursuant to section 514B-71,~~
3 ~~provided that voluntary binding arbitration under this section~~
4 ~~may be supported with funds from the condominium education trust~~
5 ~~fund only after the parties have first attempted evaluative~~
6 ~~mediation.~~

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

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

12 ~~(2) Shall receive no more from the fund than is~~
13 ~~appropriate under the circumstances, and in no event~~
14 ~~more than \$6,000 total; and~~

15 ~~(3) May include issues and parties in addition to those~~
16 ~~identified in subsection (a); provided that a unit~~
17 ~~owner or a developer and board are parties to the~~
18 ~~arbitration at all times and the unit owner or~~
19 ~~developer and the board mutually consent in writing to~~
20 ~~the addition of the issues and parties."]~~



H.B. NO. 1745

Report Title:

DCCA; Condominiums Associations; Cooperative Housing Corporations; Planned Community Associations; Ombudsman's Office; Dispute Intervention; Complaints and Enforcement Officers; Intake Specialists; Condominium Education Trust Fund; Ombudsman's Office Special Fund; Appropriations; General Fund Expenditure Ceiling Exceeded

Description:

Establishes an ombudsman's office for homeowner associations within the Department of Commerce and Consumer Affairs. Establishes an ombudsman's office special fund. Requires board members of condominium associations, cooperative housing corporations, and planned community associations to meet certain educational requirements through classes offered by the ombudsman. Updates statutes relating to condominium associations, cooperative housing corporations, and planned community associations to integrate the role and functions of the ombudsman's office for homeowner associations. Appropriates funds for establishment of the ombudsman's office. Declares that the appropriation exceeds the state general fund expenditure ceiling for 2024-2025.

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

