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# A BILL FOR AN ACT

RELATING TO CONDOMINIUM ASSOCIATIONS.

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

1           SECTION 1. The legislature finds that while condominium  
2 self-governance can be successful in the State, there have been  
3 many cases of abuse of power and other acts of malfeasance by  
4 certain association boards, association management, managing  
5 agents and their employees, and association attorneys clogging  
6 courts with litigation. This is further evidenced by public  
7 statements by leading insurance professionals that Hawaii has  
8 the highest number of association directors' and officers'  
9 liability insurance claims in the nation, assertions that are  
10 more alarming because Hawaii has a comparatively small fraction  
11 of the number of homeowners associations in other states. The  
12 legislature also finds that a central enforcement body is needed  
13 to address systemic problems faced by many condominium owners  
14 who are subjected to retribution and retaliation from boards and  
15 their members, association management, managing agents and their  
16 employees, and others representing the association. This  
17 retaliation harasses owners and impacts them emotionally and



1 financially, with unwarranted and improper fines, assessments,  
2 legal costs, and foreclosures.

3       Based on reviews of the department of commerce and consumer  
4 affairs reports published in the Hawaii Condominium Bulletin  
5 since 2016, mediation subsidized by the condominium education  
6 trust fund has not been successful, with more than three out of  
7 every five cases unresolved, mediated to "no agreement", or  
8 withdrawn because one or more parties declined to participate.

9       During the same period, nearly eight out of every ten  
10 mediated cases were filed by owners against their associations,  
11 and more than nine out of ten cases alleged breaches of the  
12 association's governing documents. Owners also sought  
13 alternative dispute resolution to address noncompliance with  
14 chapter 514B, Hawaii Revised Statutes.

15       The legislature also finds that the major advantages of  
16 mediation are to resolve disputes, alleviate the costs  
17 associated with the dispute resolution, and lessen the burden on  
18 the courts. However, to initiate the condominium education  
19 trust fund subsidized mediation process, each party must risk at  
20 least \$375 when the promise of resolution is so small. Even  
21 when parties arrived at a written agreement, the enforcement of



1 that agreement is not assured, making some resolutions  
2 ineffective unless the parties go to court. Although mediation  
3 is mandatory in many cases, some associations' boards knowingly  
4 do not participate, pressuring the owner to go to court to  
5 enforce the resolution.

6 Additionally, owners who continued the mediation process  
7 reported feeling compelled to retain attorneys, often at  
8 prohibitive costs, because their associations were represented  
9 by the associations' attorneys and, in many cases, with  
10 additional legal assistance from the attorneys representing the  
11 associations' insurers.

12 If the mediation settlement is favorable to the owner, all  
13 associations owners, including that owner, are required to pay  
14 the association's legal fees, sometimes through onerous special  
15 assessments, and suffer increased association insurance premium  
16 costs or increased deductibles.

17 The actual results of subsidized mediation have negated its  
18 intended advantages. Fair judicial proceedings have been  
19 denied to those who could not afford legal counsel, and the  
20 system has benefitted a favored group that has not resulted in  
21 the public good.



1           The legislature further finds that many owners complain  
2 that the participating attorneys are the only "winners" in their  
3 cases. This is substantiated by those who testified regarding  
4 the success of mediations, as the mediators or attorneys had  
5 pecuniary interest in the mediation process.

6           The actual outcomes of arbitration cases subsidized by the  
7 department of commerce and consumer affairs are not available.  
8 However, arbitration is recognized as an expensive means of  
9 dispute resolution and the expense of the undertaking can be  
10 cost prohibitive, resulting in a denial of justice for  
11 association members.

12           Accordingly, the purpose of this Act is to:

- 13           (1) Establish an ombudsman's office for condominium  
14           associations within the department of commerce and  
15           consumer affairs office of consumer protection to:  
16           (A) Serve as a resource for members of condominium  
17           associations;  
18           (B) Provide an office for association members to  
19           bring complaints for investigation and a process  
20           for dispute intervention through the office;



- 1 (C) Ensure compliance with existing laws and  
2 association governing documents, and seek  
3 resolution to disputes without the burdensome  
4 cost of attorneys;
- 5 (D) Provide necessary education, including training  
6 and certification for board members involved in  
7 governance and managing agents overseeing  
8 association business;
- 9 (E) Provide association members with access to  
10 association documents;
- 11 (F) Increase efficiency in addressing association-  
12 related issues;
- 13 (G) Maintain data on inquiries and complaints  
14 received, types of assistance requested, notices  
15 of decisions, actions taken, and the disposition  
16 of matters; and
- 17 (H) Provide for the administration of an election  
18 monitoring process if requested by association  
19 members;



- 1           (2) Establish an ombudsman's office special fund to cover
- 2           the costs of the ombudsman's office, with no impact on
- 3           the State's general fund;
- 4           (3) Require condominium association board members to meet
- 5           certain educational requirements through classes
- 6           offered by the ombudsman;
- 7           (4) Update the Condominium Property Act to integrate the
- 8           role and functions of the ombudsman's office for
- 9           condominium associations; and
- 10          (5) Appropriate funds for the establishment of the
- 11          ombudsman's office.

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

15           **"PART           .    OMBUDSMAN'S OFFICE FOR CONDOMINIUM ASSOCIATIONS**  
16           **§514B-A Ombudsman's office for condominium associations**  
17 **established; ombudsman; criteria for ombudsman.** (a) There is  
18 established within the department of commerce and consumer  
19 affairs office of consumer protection an ombudsman's office for  
20 condominium associations. The ombudsman's office for  
21 condominium associations shall be headed by the ombudsman, who



1 shall be appointed by the director of commerce and consumer  
2 affairs with the approval of the governor.

3 (b) The ombudsman shall have been admitted to practice law  
4 before the Hawaii supreme court and shall have extensive  
5 experience in Hawaii real estate, condominium association law,  
6 and conflict and alternative dispute resolution. The ombudsman  
7 shall not:

8 (1) Engage or have been engaged within the past two years  
9 in any other business or profession that directly or  
10 indirectly relates to or conflicts with the work of  
11 the ombudsman's office;

12 (2) Serve as the representative, executive, officer, or  
13 employee of any political party, executive committee,  
14 or other governing body of a political party;

15 (3) Receive remuneration for activities on behalf of any  
16 candidate for public office;

17 (4) Engage in soliciting votes or other activities on  
18 behalf of a candidate for public office; or

19 (5) Become a candidate for election to public office  
20 unless the ombudsman first resigns from the  
21 ombudsman's office.



1 The ombudsman shall be exempt from chapter 76.

2 **§514B-B Personnel; salary; benefits.** (a) The ombudsman  
3 shall employ professional and clerical staff as necessary for  
4 the efficient operation of the office. The ombudsman may  
5 appoint persons who have been admitted to practice law before  
6 the Hawaii supreme court as staff without regard to chapter 76.  
7 All other employees shall be appointed by the ombudsman in  
8 accordance with chapter 76.

9 (b) The ombudsman shall appoint complaints and enforcement  
10 officers who have been admitted to practice law before the  
11 Hawaii supreme court and have extensive experience in Hawaii  
12 real estate, condominium association law, and conflict and  
13 alternative dispute resolution. The complaints and enforcement  
14 officers shall be exempt from chapter 76.

15 (c) The ombudsman's office shall integrate the existing  
16 condominium specialist positions in the department of commerce  
17 and consumer affairs into the ombudsman's office as intake  
18 specialists for complaints submitted to the ombudsman's office.

19 (d) Personnel and administrative costs of the ombudsman's  
20 office shall be funded by the condominium education trust fund.



1 (e) The salary of the ombudsman shall be determined by the  
2 director of commerce and consumer affairs. The ombudsman,  
3 complaints and enforcement officers, intake specialists, and  
4 other personnel shall be included in any benefits program  
5 generally applicable to officers and employees of the State.

6 **§514B-C Ombudsman; powers and duties; immunity from**  
7 **liability.** (a) The ombudsman shall:

8 (1) Have the power to establish rules and procedures for  
9 the operation of the office that shall include  
10 receiving and processing complaints and requests for  
11 dispute intervention; conducting investigations;  
12 enforcement, including fines and penalties; and  
13 reporting the findings of the office; provided that  
14 the ombudsman shall levy nominal filing fees not to  
15 exceed \$100 to deter frivolous submissions or  
16 investigations of complaints or requests for dispute  
17 intervention;

18 (2) Develop educational classes and required  
19 certifications for all members of a board to ensure  
20 that they are aware of their responsibilities and  
21 duties and are familiar with this chapter, other



1 relevant statutes and administrative rules, and their  
2 governing documents;

3 (3) In conjunction with the department of commerce and  
4 consumer affairs, and using funds from the condominium  
5 education trust fund, educate the public and entities  
6 required to be registered or certified under this  
7 chapter;

8 (4) Have access to and use of all files and records of the  
9 department of commerce and consumer affairs;

10 (5) Act as a liaison between unit owners, boards, board  
11 members, association management, managing agents and  
12 their employees, and other affected parties;

13 (6) Act as a neutral resource for the rights and  
14 responsibilities of unit owners, associations, boards  
15 of directors, board members, managers, and any  
16 affected parties to encourage and facilitate voluntary  
17 meetings with and between these entities when meetings  
18 may assist in resolving a dispute prior to any party  
19 submitting a formal request for dispute intervention;



- 1           (7) Assist unit owners in understanding their rights and
- 2           the processes available to them according to the laws
- 3           and rules governing condominium associations;
- 4           (8) Respond to general inquiries, make recommendations, or
- 5           give guidance as necessary to assist unit owners;
- 6           (9) Make available, either separately or through an
- 7           existing website, or both, information concerning
- 8           associations and any additional information the
- 9           ombudsman may deem appropriate and non-confidential;
- 10          (10) Coordinate and assist in the preparation and adoption
- 11          of educational and reference material and endeavor to
- 12          make known to the largest possible audience the
- 13          availability of these resources;
- 14          (11) Receive written requests for dispute intervention;
- 15          (12) Investigate and assist in resolving disputes brought
- 16          by unit owners, associations, boards, and board
- 17          members, pursuant to section 514B-D;
- 18          (13) Investigate acts that may be:
- 19                (A) Contrary to law or an association's governing
- 20                rules;



1 (B) Unreasonable, unfair, oppressive, retaliatory, or  
2 discriminatory as administered or under the  
3 circumstances;

4 (C) Based on a mistake of fact;

5 (D) Based on improper or irrelevant grounds;

6 (E) Unaccompanied by an adequate statement of  
7 reasons; or

8 (F) Otherwise erroneous;

9 (14) Subject to the privileges that witnesses have in the  
10 courts of the State, have the authority to:

11 (A) Compel at a specified time and place, by a  
12 subpoena, the appearance and sworn testimony of  
13 any person whom the ombudsman reasonably believes  
14 may have information relating to a matter under  
15 investigation; and

16 (B) Compel any person to produce documents, records,  
17 and information the ombudsman reasonably believes  
18 may relate to a matter under investigation;

19 (15) Be authorized to bring suit in an appropriate state  
20 court to enforce the powers in paragraph (14);



- 1 (16) Provide advisory opinions upon request from unit  
2 owners or other affected parties;
- 3 (17) Provide recommendations to the director of commerce  
4 and consumer affairs if the ombudsman finds that:  
5 (A) The matter should be further considered by the  
6 department of commerce and consumer affairs;  
7 (B) A statute or rule should be amended or repealed;  
8 or  
9 (C) Other action should be taken by the department of  
10 commerce and consumer affairs;
- 11 (18) Within a reasonable time after providing  
12 recommendations to the director of commerce and  
13 consumer affairs pursuant to paragraph (17), the  
14 ombudsman may submit a report to the governor or the  
15 legislature or publish the report, including any reply  
16 by the department of commerce and consumer affairs,  
17 and notify the complainant of the actions taken by the  
18 ombudsman and the department;
- 19 (19) Ensure that association members have access to the  
20 services provided through the ombudsman's office and  
21 that association members receive responses from the



1           ombudsman's office within thirty days of the member's  
2           inquiry;

3           (20) Maintain publicly available data on inquiries and  
4           complaints received, types of assistance requested,  
5           notices of final decisions and actions taken, and  
6           disposition of matters;

7           (21) Monitor changes in federal and state laws relating to  
8           associations;

9           (22) Assist unit owners with disputes concerning  
10          association elections or meetings, including  
11          recommending that the department of commerce and  
12          consumer affairs pursue an enforcement action in any  
13          matter where the ombudsman has reasonable cause to  
14          believe that election misconduct has occurred,  
15          pursuant to section 514B-I;

16          (23) Have the authority to remove from the board any board  
17          member of an association who is found to have  
18          committed wilful misconduct in violation of any laws  
19          or the condominium's governing documents, as provided  
20          in section 514B-105(f);



1 (24) Provide to the governor and the public an annual  
2 report that includes the number and types of requests  
3 for dispute intervention submitted to the ombudsman's  
4 office and their disposition, and any suggestions for  
5 policy or legislation the ombudsman's office deems  
6 necessary to more quickly and efficiently resolve  
7 condominium disputes; and

8 (25) Adopt rules pursuant to chapter 91 necessary to carry  
9 out the purposes of this part.

10 (b) No proceeding or decision of the ombudsman may be  
11 reviewed by any court unless the proceeding or decision  
12 contravenes this chapter. The ombudsman shall have the same  
13 immunities from civil and criminal liability as a judge of the  
14 State. The ombudsman and the staff of the ombudsman's office  
15 shall not testify in any court concerning matters coming to  
16 their attention in the exercise of their official duties except  
17 as may be necessary to enforce this chapter.

18 **§514B-D Request for dispute intervention.** (a) Except as  
19 otherwise provided in this section, a unit owner or association,  
20 by its board members, who is a party to a dispute involving the  
21 interpretation or enforcement of an association's governing



1 documents, including the condominium's declaration, bylaws, and  
2 house rules, this chapter, or any other law the association is  
3 obligated to follow, may submit to the ombudsman's office a  
4 written request for dispute intervention setting forth the facts  
5 forming the basis of the dispute.

6 (b) Simultaneous with the submission of a dispute  
7 intervention request, a unit owner shall provide the board,  
8 association management, or managing agent a copy of the request  
9 for dispute intervention. The notice shall be sent to the  
10 addressee by certified mail, return receipt requested, or by  
11 hand delivery with confirmation of delivery. The notice shall  
12 specify in reasonable detail:

- 13 (1) The nature of the dispute;
- 14 (2) Any violations of this chapter, the association  
15 governing documents, or any other law or regulation  
16 the association is obligated to follow;
- 17 (3) Any alleged damages that resulted from the dispute;  
18 and
- 19 (4) Any proposed corrective action to resolve the dispute.

20 (c) A dispute intervention request submitted to the  
21 ombudsman's office pursuant to this section shall be on a form



1 prescribed by the ombudsman's office and accompanied by evidence  
2 that:

3 (1) The respondent has been given a reasonable opportunity  
4 to correct the dispute; and

5 (2) Reasonable efforts to resolve the dispute have failed.

6 (d) The ombudsman may impose a minimum fine of \$250  
7 against any person who knowingly submits a false or fraudulent  
8 dispute intervention request with the ombudsman's office.

9 (e) Legal representation shall not be required for dispute  
10 intervention by the ombudsman's office. Unit owners shall not  
11 be assessed any legal fees incurred by the association, board,  
12 board members, managing agent, or other parties as a result of a  
13 dispute intervention request submitted to the ombudsman's  
14 office.

15 **§514B-E Enforcement by complaints and enforcement**

16 **officers; dispute resolution assistance.** (a) Upon receipt of a  
17 dispute intervention request pursuant to section 514B-D, the  
18 complaints and enforcement officer shall open an investigation  
19 into the dispute.

20 (b) The complaints and enforcement officer may interview  
21 parties and witnesses involved in the dispute and request the



1 production of documents, records, and information pursuant to  
2 section 514B-154.5, or other evidence or documents that would be  
3 reasonably helpful in resolving the dispute. Participation by  
4 the complainant, board members, and the board shall be  
5 mandatory. An owner or board member who refuses to participate  
6 shall be subject to penalties and fines to be predetermined and  
7 published by the ombudsman. If the board determines not to  
8 participate, each board member voting not to participate shall  
9 be considered in violation of this Act, shall be personally  
10 assessed a monetary fine, and may be removed from the board.

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

15 (d) If the complaints and enforcement officer determines  
16 that an association or board is at fault in a dispute, the  
17 association or board shall be responsible for any legal fees,  
18 costs, expenses, interest, or fines levied against the unit  
19 owner involved in the dispute.

20 (e) The complaints and enforcement officer may impose a  
21 fine in the amount of not less than \$250 against any person who



1 knowingly submits false or fraudulent information to the  
2 ombudsman's office, willingly hinders the lawful actions of the  
3 ombudsman or the staff of the ombudsman's office, or willingly  
4 refuses to comply with the lawful demands of the ombudsman or  
5 the staff of the ombudsman's office.

6 (f) If the parties are unable to reach an agreement under  
7 this section or if a party does not agree with the decision of  
8 the complaints and enforcement officer, a party may request a  
9 contested case hearing with the ombudsman's office that shall be  
10 presided over by the ombudsman. Participation in a contested  
11 case hearing by the complainant, board members, and the board  
12 shall be mandatory.

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

17 **§514B-F Contested case hearing.** (a) A contested case  
18 hearing shall be conducted by the ombudsman pursuant to chapter  
19 91 and any rules adopted by the ombudsman's office; provided  
20 that if there is no dispute as to the facts involved in a  
21 particular matter, the ombudsman may permit the parties to



1 proceed by memoranda of law in lieu of a hearing, unless the  
2 procedure would unduly burden any party or would otherwise not  
3 serve the ends of justice.

4 (b) The ombudsman shall not be bound by the rules of  
5 evidence when conducting a hearing to determine whether a  
6 violation of this part has occurred. The standard of proof  
7 required shall be a preponderance of the evidence.

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

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

12 (e) If a hearing is held or a review by memoranda of law  
13 is conducted, a decision shall be rendered by the ombudsman's  
14 office and promptly delivered to each party by certified mail.  
15 Any party adversely affected by the decision may submit written  
16 exceptions to the ombudsman's office within fifteen days after  
17 receipt of the decision.

18 (f) As expeditiously as possible after the close of the  
19 hearing but not before any party adversely affected has had the  
20 opportunity to submit a written exception, the ombudsman shall  
21 issue a decision together with separate findings of fact and



1 conclusions of law regarding whether a violation of this part  
2 has occurred. Any final decision made by the ombudsman shall be  
3 binding on all parties.

4 **§514B-G Fines; fees.** Any fine or fee collected pursuant  
5 to this part shall be deposited into the ombudsman's office  
6 special fund.

7 **§514B-H Ombudsman's office special fund.** (a) There is  
8 established in the state treasury an ombudsman's office special  
9 fund into which shall be deposited the following moneys:

10 (1) Administrative penalties, fines, and other charges  
11 collected under this chapter or any rule adopted  
12 pursuant to this chapter; and

13 (2) One hundred per cent of all fees required by this  
14 chapter to be deposited into the condominium education  
15 trust fund.

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

19 (c) The ombudsman's office shall adopt rules in accordance  
20 with chapter 91 for the purposes of this section.



1           **§514B-I Condominium association election monitoring.**

2 Fifteen per cent of the total common interests in an association  
3 or six unit owners, whichever is greater, may petition the  
4 ombudsman to appoint an election monitor to attend the annual  
5 meeting of the unit owners and oversee the election of board  
6 members. The ombudsman shall appoint an employee of the  
7 ombudsman's office, one or more persons specializing in  
8 association election monitoring, or an attorney licensed to  
9 practice in the State as the election monitor. All costs  
10 associated with the election monitoring process shall be paid by  
11 the association. The ombudsman's office shall adopt rules  
12 establishing procedures for the appointment of election monitors  
13 and the scope and extent of the monitor's role in the election  
14 process."

15           SECTION 3. Section 421I-9, Hawaii Revised Statutes, is  
16 amended to read as follows:

17           **"§421I-9 Mediation and arbitration of disputes.** At the  
18 request of any party, any dispute concerning or involving one or  
19 more shareholders and a corporation, its board of directors,  
20 managing agent, resident manager, or one or more other  
21 shareholders relating to the interpretation, application, or



1 enforcement of this chapter or the corporation's articles of  
2 incorporation, bylaws, or rules adopted in accordance with its  
3 bylaws shall be submitted first to mediation. When all  
4 reasonable efforts for mediation have been made and the dispute  
5 is not settled either in conference between the parties or  
6 through mediation, the dispute shall be submitted to arbitration  
7 ~~[in the same manner and subject to the same requirements, to the~~  
8 ~~extent practicable, which now apply to condominiums under~~  
9 ~~section 514B-162]."~~

10 SECTION 4. Chapter 514B, Hawaii Revised Statutes, is  
11 amended by adding a new section to part VI to be appropriately  
12 designated and to read as follows:

13 "§514B- Board members; education requirement. Every  
14 existing member of a board shall take educational classes  
15 established by the ombudsman and obtain a certificate of  
16 satisfactory completion within three months of the classes being  
17 made available by the ombudsman. Every new member of a board  
18 shall take the educational classes established by the ombudsman  
19 and obtain a certificate of satisfactory completion within three  
20 months of acceptance to the board. The classes and  
21 certification requirement shall be structured to ensure the



1 member is aware of the member's responsibilities and duties and  
2 is familiar with this chapter, other relevant statutes and  
3 administrative rules, and the association's governing documents.  
4 The educational classes shall be completed by each board member  
5 at least once every three years. Any board member's  
6 certificates of satisfactory completion shall be available for  
7 inspection by the members of the applicable association."

8 SECTION 5. Section 514B-3, Hawaii Revised Statutes, is  
9 amended by adding three new definitions to be appropriately  
10 inserted and to read as follows:

11 "Complaints and enforcement officer" means the complaints  
12 and enforcement officer established pursuant to section 514B-B.

13 "Intake specialist" means the intake specialist established  
14 pursuant to section 514B-B.

15 "Ombudsman's office" means the ombudsman's office  
16 established pursuant to section 514B-A."

17 SECTION 6. Section 514B-65, Hawaii Revised Statutes, is  
18 amended to read as follows:

19 **"§514B-65 Investigative powers.** If the commission or  
20 ombudsman's office has reason to believe that any person is  
21 violating or has violated this part, part V, part , section



1 514B-103, 514B-132, 514B-134, 514B-149, sections 514B-152 to  
2 514B-154, section 514B-154.5, or the rules of the commission  
3 adopted pursuant thereto, the commission or the ombudsman's  
4 office may conduct an investigation of the matter and examine  
5 the books, accounts, contracts, records, and files of all  
6 relevant parties. For purposes of this examination, the  
7 developer and the real estate broker shall keep and maintain  
8 records of all sales transactions and of the funds received by  
9 the developer and the real estate broker in accordance with  
10 chapter 467 and the rules of the commission, and shall make the  
11 records accessible to the commission upon reasonable notice and  
12 demand."

13 SECTION 7. Section 514B-68, Hawaii Revised Statutes, is  
14 amended to read as follows:

15 "**§514B-68 Power to enjoin.** Whenever the commission or  
16 ombudsman's office believes from satisfactory evidence that any  
17 person or entity has violated this part, part V, part ,  
18 section 514B-103, 514B-132, 514B-134, 514B-149, sections  
19 514B-152 to 514B-154, section 514B-154.5, or the rules of the  
20 commission adopted pursuant thereto, [~~it~~] the commission or  
21 ombudsman's office may conduct [~~an~~] a civil or criminal



1 investigation of the matter and bring an action against the  
2 person or entity in any court of competent jurisdiction on  
3 behalf of the State to enjoin the person or entity from  
4 continuing the violation or doing any acts in furtherance  
5 thereof."

6 SECTION 8. Section 514B-71, Hawaii Revised Statutes, is  
7 amended to read as follows:

8 "**§514B-71 Condominium education trust fund.** (a) The  
9 commission shall establish a condominium education trust fund  
10 that the commission and ombudsman's office shall use for  
11 educational purposes. Educational purposes shall include  
12 financing or promoting:

- 13 (1) Education and research in the field of condominium  
14 management, condominium project registration, and real  
15 estate, for the benefit of the public and those  
16 required to be registered under this chapter;
- 17 (2) The improvement and more efficient administration of  
18 associations; and
- 19 (3) Expeditious and inexpensive procedures for resolving  
20 association disputes[†



- 1       ~~(4) Support for mediation of condominium related disputes;~~
- 2             ~~and~~
- 3       ~~(5) Support for voluntary binding arbitration between~~
- 4             ~~parties in condominium related disputes, pursuant to~~
- 5             ~~section 514B-162.5].~~

6           (b) The commission shall use all moneys in the condominium  
7 education trust fund for purposes consistent with subsection  
8 (a) [-]; provided that one hundred per cent of the fees required  
9 to be deposited into the trust fund by this chapter shall be  
10 transferred to the ombudsman's office special fund established  
11 under section 514B-H for use by the ombudsman's office. Any law  
12 to the contrary notwithstanding, the commission may make a  
13 finding that a fee adjustment is appropriate and adjust the fees  
14 paid by associations to regulate the fund balance to an  
15 appropriate level to maintain a reasonable relation between the  
16 fees generated and the cost of services rendered by the  
17 condominium education trust fund. For the purposes of finding  
18 that a fee adjustment is appropriate in order to maintain a  
19 reasonable relation between the fees generated and the cost of  
20 services rendered by the fund, the commission's review shall  
21 include the following:



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

11 The balance of the fund shall not exceed a sum determined by the  
12 commission. The sum shall be determined by the commission  
13 biennially."

14           SECTION 9. Section 514B-72, Hawaii Revised Statutes, is  
15 amended by amending subsection (a) to read as follows:

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

- 18           (1) A condominium education trust fund fee within one year
- 19           after the recordation of the purchase of the first
- 20           unit or within thirty days of the association's first
- 21           meeting, and thereafter, on or before June 30 of every



1 odd-numbered year, as prescribed by rules adopted  
2 pursuant to chapter 91; and  
3 (2) Beginning with the July 1, ~~[2015,]~~ 2025, biennium  
4 registration, an additional annual condominium  
5 education trust fund fee in an amount equal to the  
6 product of ~~[\$1.50]~~ \$12.50 times the number of  
7 condominium units included in the registered project  
8 or association to be dedicated to supporting  
9 ~~[mediation or voluntary binding arbitration of~~  
10 ~~condominium related disputes.]~~ the ombudsman's office.  
11 The additional condominium education trust fund fee  
12 shall total ~~[\$3]~~ \$25 per unit until the commission  
13 adopts rules pursuant to chapter 91. On June 30 of  
14 every odd-numbered year, any unexpended additional  
15 amounts paid into the condominium education trust fund  
16 ~~[and initially dedicated to supporting mediation or~~  
17 ~~voluntary binding arbitration of condominium related~~  
18 ~~disputes]~~, as required by this paragraph, shall be  
19 used for educational purposes as provided in section  
20 514B-71(a)(1), (2), and (3)."



1 SECTION 10. Section 514B-73, Hawaii Revised Statutes, is  
2 amended to read as follows:

3 **"§514B-73 Condominium education trust fund; management.**

4 (a) The sums received by the commission for deposit in the  
5 condominium education trust fund pursuant to section 514B-72  
6 shall be held by the commission in trust for carrying out the  
7 purpose of the fund.

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



1 (c) The moneys in the condominium education trust fund  
2 collected pursuant to section 514B-72[7] and the rules of the  
3 commission may be invested and reinvested together with the real  
4 estate education fund established under section 467-19 in the  
5 same manner as are the funds of the employees' retirement system  
6 of the State. The interest and earnings from these investments  
7 shall be deposited to the credit of the condominium education  
8 trust fund.

9 (d) The commission shall annually submit to the  
10 legislature, no later than twenty days prior to the convening of  
11 each regular session:

12 (1) A summary of the programs funded during the prior  
13 fiscal year and the amount of money in the fund,  
14 including a statement of which programs were directed  
15 specifically at the education of condominium owners;  
16 and

17 (2) A copy of the budget for the current fiscal year,  
18 including summary information on programs that were  
19 funded or are to be funded and the target audience for  
20 each program. The budget shall include a line item



1 reflecting the total amount collected from condominium  
2 associations.

3 (e) The ombudsman shall prepare and submit to the governor  
4 an annual report as to the number and types of requests for  
5 dispute intervention submitted to the ombudsman's office and  
6 their disposition, and any proposed legislation or policy the  
7 ombudsman's office deems necessary to more quickly and  
8 efficiently resolve condominium disputes. The annual report  
9 shall be made available to the public."

10 SECTION 11. Section 514B-104, Hawaii Revised Statutes, is  
11 amended by amending subsection (a) to read as follows:

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

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

17 (2) Adopt and amend budgets for revenues, expenditures,  
18 and reserves and collect assessments for common  
19 expenses from unit owners, subject to section  
20 514B-148;



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



1 (B) If the developer discloses to the initial buyer  
2 in writing that additional areas will be  
3 designated as common elements whether pursuant to  
4 an incremental or phased project or otherwise,  
5 the requirements of this paragraph shall not  
6 apply as to those additional areas; and

7 (C) The requirements of this paragraph shall not  
8 apply to the purchase of a unit for a resident  
9 manager, which may be purchased [~~with the~~  
10 ~~approval of the board;~~] through a provision in  
11 the bylaws;

12 (9) Subject to section 514B-38, grant easements, leases,  
13 licenses, and concessions through or over the common  
14 elements and permit encroachments on the common  
15 elements;

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



- 1           (11) Impose charges and penalties, including late fees and  
2           interest, for late payment of assessments and levy  
3           reasonable fines for violations of the declaration,  
4           bylaws, rules, and regulations of the association,  
5           either in accordance with the bylaws or, if the bylaws  
6           are silent, pursuant to a resolution adopted by the  
7           board that establishes a fining procedure that states  
8           the basis for the fine and allows an appeal to the  
9           board of the fine with notice and an opportunity to be  
10          heard and providing that if the fine is paid, the unit  
11          owner shall have the right to initiate a dispute  
12          resolution process [~~as provided~~] by [~~sections 514B-~~  
13          ~~161, 514B-162, or by filing a request for an~~  
14          ~~administrative hearing under a pilot program~~  
15          ~~administered by the department of commerce and~~  
16          ~~consumer affairs;~~] requesting dispute intervention or  
17          dispute resolution assistance from the ombudsman's  
18          office pursuant to sections 514B-D, 514B-E, and 514B-  
19          E;
- 20          (12) Impose reasonable charges for the preparation and  
21          recordation of amendments to the declaration,



- 1 documents requested for resale of units, or statements  
2 of unpaid assessments;
- 3 (13) Provide for cumulative voting through a provision in  
4 the bylaws;
- 5 (14) Provide for the indemnification of its officers,  
6 board, committee members, and agents, and maintain  
7 directors' and officers' liability insurance;
- 8 (15) Assign its right to future income, including the right  
9 to receive common expense assessments, but only to the  
10 extent section 514B-105(e) expressly so provides;
- 11 (16) Exercise any other powers conferred by the declaration  
12 or bylaws;
- 13 (17) Exercise all other powers that may be exercised in  
14 this State by legal entities of the same type as the  
15 association, except to the extent inconsistent with  
16 this chapter;
- 17 (18) Exercise any other powers necessary and proper for the  
18 governance and operation of the association; and
- 19 (19) By regulation, subject to sections 514B-146,  
20 ~~[514B-161, and 514B-162,]~~ 514B-D, 514B-E, and 514B-F,  
21 require that disputes between the board and unit



1 owners or between two or more unit owners regarding  
 2 the condominium be submitted to [~~nonbinding~~  
 3 ~~alternative dispute resolution~~] the ombudsman's office  
 4 in the manner described in the regulation as a  
 5 prerequisite to commencement of a judicial  
 6 proceeding."

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

9 "**§514B-105 Association; limitations on powers.** (a) The  
 10 declaration and bylaws [~~may~~] shall not impose limitations on the  
 11 power of the association to deal with the developer [~~which~~] that  
 12 are more restrictive than the limitations imposed on the power  
 13 of the association to deal with other persons.

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

- 18 (1) Prevent any use of a unit [~~which~~] that violates the  
 19 declaration or bylaws;
- 20 (2) Regulate any behavior in or occupancy of a unit  
 21 [~~which~~] that violates the declaration or bylaws or



1           unreasonably interferes with the use and enjoyment of  
2           other units or the common elements by other unit  
3           owners; or

4           (3) Restrict the leasing of residential units to the  
5           extent those rules are reasonably designed to meet  
6           underwriting requirements of institutional lenders who  
7           regularly lend money secured by first mortgages on  
8           units in condominiums or regularly purchase those  
9           mortgages.

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

12          (c) Any payments made by or on behalf of a unit owner  
13          shall first be applied to outstanding common expenses that are  
14          assessed to all unit owners in proportion to the common interest  
15          appurtenant to their respective units. Only after said  
16          outstanding common expenses have been paid in full may the  
17          payments be applied to other charges owed to the association,  
18          including assessed charges to the unit such as ground lease  
19          rent, utility sub-metering, storage lockers, parking stalls,  
20          boat slips, insurance deductibles, and cable. After these  
21          charges are paid, other charges, including unpaid late fees,



1 legal fees, fines, and interest, may be assessed in accordance  
2 with an application of payment policy adopted by the board;  
3 provided that if a unit owner has designated that any payment is  
4 for a specific charge that is not a common expense as described  
5 in this subsection, the payment may be applied in accordance  
6 with the unit owner's designation even if common expenses remain  
7 outstanding.

8 (d) No unit owner who requests legal or other information  
9 from the association, the board, the managing agent, or their  
10 employees or agents, shall be charged for the reasonable cost of  
11 providing the information unless the association notifies the  
12 unit owner that it intends to charge the unit owner for the  
13 reasonable cost. The association shall notify the unit owner in  
14 writing at least ten days prior to incurring the reasonable cost  
15 of providing the information, except that no prior notice shall  
16 be required to assess the reasonable cost of providing  
17 information on delinquent assessments or in connection with  
18 proceedings to enforce the law or the association's governing  
19 documents.

20 After being notified of the reasonable cost of providing  
21 the information, the unit owner may withdraw the request, in



1 writing. A unit owner who withdraws a request for information  
2 shall not be charged for the reasonable cost of providing the  
3 information.

4 (e) Subject to any approval requirements and spending  
5 limits contained in the declaration or bylaws, the association  
6 may authorize the board to borrow money for the repair,  
7 replacement, maintenance, operation, or administration of the  
8 common elements and personal property of the project, or the  
9 making of any additions, alterations, and improvements thereto;  
10 provided that the board shall make available any reports  
11 provided by licensed or certified professionals that document  
12 the necessity and urgency of that expenditure, provide to all  
13 unit owners a written notice of the purpose and use of the funds  
14 [is first sent to all unit owners and owners], and hold a  
15 special meeting to discuss the expenditure and review the  
16 reports. Owners representing more than fifty per cent of the  
17 common interest shall vote [øx] and give written consent to the  
18 borrowing. In connection with the borrowing, the board may  
19 grant to the lender the right to assess and collect monthly or  
20 special assessments from the unit owners and to enforce the  
21 payment of the assessments or other sums by statutory lien and



1 foreclosure proceedings. The cost of the borrowing, including,  
2 without limitation, all principal, interest, commitment fees,  
3 and other expenses payable with respect to the borrowing or the  
4 enforcement of the obligations under the borrowing, shall be a  
5 common expense of the project. For purposes of this section,  
6 the financing of insurance premiums by the association within  
7 the policy period shall not be deemed a loan and no lease shall  
8 be deemed a loan if it provides that at the end of the lease the  
9 association may purchase the leased equipment for its fair  
10 market value.

11 (f) If the association or the board is involved in a  
12 dispute intervention through the ombudsman's office pursuant to  
13 section 514B-D, no special assessment related to the dispute,  
14 including association attorneys' fees, shall be assessed or  
15 collected from unit owners until the ombudsman's office has  
16 completed an investigation and rendered a final decision. If  
17 the final decision is in favor of the unit owner, any and all  
18 assessments, fines, costs, expenses, interest, and legal fees  
19 improperly assessed to the unit owner shall be reversed. Any  
20 board member who is found to have committed wilful misconduct in



1 violation of any laws or the governing documents shall be  
2 removed from the board by the authority of the ombudsman."

3 SECTION 13. Section 514B-106, Hawaii Revised Statutes, is  
4 amended by amending subsection (a) to read as follows:

5 "(a) Except as provided in the declaration, the bylaws,  
6 subsection (b), or other provisions of this chapter, the board  
7 may act in all instances on behalf of the association. In the  
8 performance of their duties, officers and members of the board  
9 shall owe the association a fiduciary duty and exercise the  
10 degree of care and loyalty required of an officer or director of  
11 a corporation organized under chapter 414D. Any violation by a  
12 board or its officers or members of [~~the mandatory provisions of~~  
13 ~~section 514B-161 or 514B-162]~~ section 514B-D, 514B-E, or 514B-F  
14 may constitute a violation of the fiduciary duty owed pursuant  
15 to this subsection; provided that a board member may avoid  
16 liability under this subsection by indicating in writing the  
17 board member's disagreement with [~~such board]~~ the board's action  
18 or rescinding or withdrawing the violating conduct within forty-  
19 five days of the occurrence of the initial violation."

20 SECTION 14. Section 514B-146, Hawaii Revised Statutes, is  
21 amended as follows:



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

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

6           (1) Under Hawaii law, a unit owner has no right to  
7 withhold common expense assessments for any reason;

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

15           (3) Payment in full of the common expense assessment shall  
16 not prevent the owner from contesting the common  
17 expense assessment or receiving a refund of amounts  
18 not owed; and

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



1 unit owner may [~~demand mediation~~] request dispute  
2 intervention as provided in subsection (g) prior to  
3 paying those charges."

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

5 "(f) A unit owner who pays an association the full amount  
6 of the common expenses claimed by the association may file in  
7 small claims court or require the association to [~~mediate~~]  
8 participate in dispute intervention under the ombudsman's office  
9 to resolve any disputes concerning the amount or validity of the  
10 association's common expense claim. If the unit owner and the  
11 association are unable to resolve the dispute through  
12 [~~mediation,~~] dispute intervention under the ombudsman's office,  
13 either party may [~~file~~] submit a request for [~~arbitration under~~  
14 ~~section 514B-162;~~] a contested case hearing under section 514B-  
15 F; provided that a unit owner may only [~~file~~] submit a request  
16 for [~~arbitration~~] a contested case hearing if all amounts  
17 claimed by the association as common expenses are paid in full  
18 on or before the date of filing. If the unit owner fails to  
19 keep all association common expense assessments current during  
20 the [~~arbitration,~~] contested case hearing process, the  
21 association may ask the [~~arbitrator~~] ombudsman to temporarily



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

11 (g) A unit owner who contests the amount of any attorneys'  
12 fees and costs, penalties or fines, late fees, lien filing fees,  
13 or any other charges, except common expense assessments, may  
14 make a demand in writing for [~~mediation~~] dispute intervention on  
15 the validity of those charges. The unit owner has thirty days  
16 from the date of the written statement requested pursuant to  
17 subsection (d) to [~~file demand for mediation~~] submit a request  
18 for dispute intervention on the disputed charges, other than  
19 common expense assessments. If the unit owner fails to [~~file~~]  
20 submit a request for [~~mediation~~] dispute intervention within  
21 thirty days of the date of the written statement requested



1 pursuant to subsection (d), the association may proceed with  
2 collection of the charges. If the unit owner makes a request  
3 for [~~mediation~~] dispute intervention within thirty days, the  
4 association shall be prohibited from attempting to collect any  
5 of the disputed charges until the association has participated  
6 in the [~~mediation. The mediation shall be completed within~~  
7 ~~sixty days of the unit owner's request for mediation; provided~~  
8 ~~that if the mediation is not completed within sixty days or the~~  
9 ~~parties are unable to resolve the dispute by mediation, the~~  
10 ~~association may proceed with collection of all amounts due from~~  
11 ~~the unit owner for attorneys' fees and costs, penalties or~~  
12 ~~finer, late fees, lien filing fees, or any other charge that is~~  
13 ~~not imposed on all unit owners as a common expense.] dispute  
14 intervention. The dispute intervention shall be completed  
15 within sixty days of the unit owner's request for dispute  
16 intervention; however, a reasonable extension may be provided at  
17 the ombudsman's discretion."~~

18 SECTION 15. Section 514B-146.5, Hawaii Revised Statutes,  
19 is amended by amending subsection (a) to read as follows:

20 "(a) Any notice of default and intention to foreclose  
21 given by an association under section 667-92(a) shall, in



1 addition to the requirements of that section, also include a  
2 statement that the unit owner may request [~~mediation~~] dispute  
3 intervention by delivering a written request for [~~mediation~~]  
4 dispute intervention to the association by certified mail,  
5 return receipt requested, or hand delivery within thirty days  
6 after service of a notice of default and intention to foreclose  
7 on the unit owner.

8       If the association does not receive a request for  
9 [~~mediation~~] dispute intervention within the thirty-day period,  
10 the association may proceed with nonjudicial or power of sale  
11 foreclosure, subject to all applicable provisions of this  
12 chapter and chapter 667. If the association receives a request  
13 for [~~mediation~~] dispute intervention, as set forth in this  
14 subsection, from a unit owner within thirty days after service  
15 of a notice of default and intention to foreclose upon the unit  
16 owner, the association shall agree to [~~mediate~~] dispute  
17 intervention and shall be prohibited from proceeding with  
18 nonjudicial or power of sale foreclosure until the association  
19 has participated in the [~~mediation~~] dispute intervention or the  
20 time period for completion of the [~~mediation~~] dispute  
21 intervention has elapsed. The [~~mediation~~] dispute intervention



1 shall be completed within sixty days of the date upon which the  
2 unit owner delivers a request for [~~mediation upon~~] dispute  
3 intervention to the association; provided that if the  
4 [~~mediation~~] dispute intervention is not commenced or completed  
5 within sixty days or the parties are unable to resolve the  
6 dispute by [~~mediation,~~] dispute intervention, the association  
7 may proceed with nonjudicial or power of sale foreclosure,  
8 subject to all applicable provisions of this chapter and chapter  
9 667."

10 SECTION 16. Section 514B-154, Hawaii Revised Statutes, is  
11 amended as follows:

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

13 "(b) Financial statements, general ledgers, the accounts  
14 receivable ledger, accounts payable ledgers, check ledgers,  
15 insurance policies, contracts, and invoices of the association  
16 for the duration those records are kept by the association and  
17 delinquencies of ninety days or more shall be available for  
18 examination by unit owners at convenient hours at a place  
19 designated by the board; provided that:

20 (1) The board may require owners to furnish to the  
21 association a duly executed and acknowledged affidavit



1           stating that the information is requested in good  
2           faith for the protection of the interests of the  
3           association, its members, or both; and

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

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

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

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

16          (2) The board may require owners to furnish to the  
17          association a duly executed and acknowledged affidavit  
18          stating that the information is requested in good  
19          faith for the protection of the interest of the  
20          association or its members or both; and



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

3 The documents may be destroyed ninety days after the  
4 association meeting; provided that in the event of a contested  
5 election, the documents shall be retained until the contested  
6 election is resolved. Copies of tally sheets, owners' check-in  
7 lists, and the certificates of election from the most recent  
8 association meeting shall be provided to any owner upon the  
9 owner's request; provided that the owner pays a reasonable fee  
10 for duplicating, postage, stationery, and other administrative  
11 costs associated with handling the request."

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

13 "(j) Any fee charged to a member to obtain copies of  
14 association records under this section shall be reasonable;  
15 provided that a reasonable fee shall include actual  
16 administrative and duplicating costs and shall not exceed \$1 per  
17 printed page, or portion thereof, except the fee for pages  
18 exceeding eight and one-half inches by fourteen inches may  
19 exceed \$1 per printed page. Charges for electronic copies of  
20 documents shall be limited to reasonable and actual  
21 administrative costs and shall first be applied to the twenty



1 free hours allocated to the association. A maximum \$5 charge is  
2 allowed for any electronic document requested."

3 SECTION 17. Section 514B-154.5, Hawaii Revised Statutes,  
4 is amended to read as follows:

5 **"§514B-154.5 Association documents to be provided. (a)**

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

14 (1) All financial and other records sufficiently detailed  
15 in order to comply with requests for information and  
16 disclosures related to the resale of units;

17 (2) An accurate copy of the declaration, bylaws, house  
18 rules, if any, master lease, if any, a sample original  
19 conveyance document, and all public reports and any  
20 amendments thereto;



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



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

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

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

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

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

18 (9) Meeting minutes of the board, including executive  
19 session records of voting results regarding the  
20 imposition of special assessments, charges, and fines,



1           including legal fees, pursuant to section 514B-126,  
2           which shall be:

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

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

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

18          (ii) The owner or owner's authorized agent shall  
19          pay a reasonable fee for administrative  
20          costs associated with handling the request,  
21          subject to section 514B-105(d);



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

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

16           (B) Unit owners or owners' authorized agents shall  
17           pay for administrative costs in excess of [~~eight~~]  
18           twenty hours per year;

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



- 1           (12) Copies of an association's documents, records, and  
2                   information, whether maintained, kept, or required to  
3                   be provided pursuant to this section or section  
4                   514B-152, 514B-153, or 514B-154;
- 5           (13) A copy of the management contract from the entity that  
6                   manages the operation of the property before the  
7                   organization of an association;
- 8           (14) Other documents requested by a unit owner or owner's  
9                   authorized agent in writing; provided that the board  
10                  shall give written authorization or written refusal  
11                  with an explanation of the refusal within thirty  
12                  calendar days of receipt of a request for documents  
13                  pursuant to this paragraph; and
- 14          (15) A copy of any contract, written job description, and  
15                  compensation between the association and any person or  
16                  entity retained by the association to manage the  
17                  operation of the property on-site, including but not  
18                  limited to the general manager, operations manager,  
19                  resident manager, or site manager; provided that  
20                  personal information may be redacted from the contract  
21                  copy, including but not limited to the manager's date



1 of birth, age, signature, social security number,  
2 residence address, telephone number, non-business  
3 electronic mail address, driver's license number,  
4 Hawaii identification card number, bank account  
5 number, credit or debit card number, access code or  
6 password that would permit access to the manager's  
7 financial accounts, or any other information that may  
8 be withheld under state or federal law.

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

15 (c) Notwithstanding any provision in the declaration,  
16 bylaws, or house rules providing for another period of time, all  
17 documents, records, and information listed under subsection (a),  
18 whether maintained, kept, or required to be provided pursuant to  
19 this section or section 514B-152, 514B-153, or 514B-154, shall  
20 be provided no later than thirty days after receipt of a unit  
21 owner's or owner's authorized agent's written request, unless a



1 lesser time is provided pursuant to this section or section  
2 514B-152, 514B-153, or 514B-154, and except as provided in  
3 subsection (a)(14).

4 (d) Any documents, records, and information, whether  
5 maintained, kept, or required to be provided pursuant to this  
6 section or section 514B-152, 514B-153, or 514B-154, may be made  
7 available electronically to the unit owner or owner's authorized  
8 agent if the owner or owner's authorized agent requests such in  
9 writing.

10 (e) An association may comply with this section or section  
11 514B-152, 514B-153, or 514B-154 by making the required  
12 documents, records, and information available to unit owners or  
13 owners' authorized agents for download through an internet site,  
14 at the option of each unit owner or owner's authorized agent and  
15 at no cost to the unit owner or owner's authorized agent.

16 (f) Any fee charged to a unit owner or owner's authorized  
17 agent to obtain copies of the association's documents, records,  
18 and information, whether maintained, kept, or required to be  
19 provided pursuant to this section or section 514B-152, 514B-153,  
20 or 514B-154, shall be reasonable; provided that a reasonable fee  
21 shall include actual administrative and duplicating costs and



1 shall not exceed \$1 per printed page, or portion thereof, except  
2 that the fee for pages exceeding eight and one-half inches by  
3 fourteen inches may exceed \$1 per printed page. Charges for  
4 electronic copies of documents shall be limited to reasonable  
5 and actual administrative costs and shall first be applied to  
6 the twenty free hours allocated to the association. A maximum  
7 \$5 charge is allowed for any electronic document requested.

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

18 ~~(g)~~ (h) This section shall apply to all condominiums  
19 organized under this chapter or any predecessor thereto.



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

4       SECTION 18. Section 514B-157, Hawaii Revised Statutes, is  
5 amended to read as follows:

6       "~~+~~§514B-157~~+~~ **Attorneys' fees, delinquent assessments,**  
7 **and expenses of enforcement.** (a) Fees for attorneys' services  
8 incurred by a board shall not be reimbursed by individual unit  
9 owners when the services are for the purposes of:

10       (1) Responding to written or oral inquiries, comments,  
11       complaints, or requests for dispute intervention by  
12       unit owners regarding condominium operations, property  
13       usage, board fiduciary duties, common elements, and  
14       resident actions;

15       (2) Expressing unit owners' intentions to challenge the  
16       existing declaration, bylaws, and rules of the  
17       association; or

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



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

4            (1) Collecting any delinquent assessments against any  
5 owner's unit;

6            (2) Foreclosing any lien thereon; or

7            (3) Enforcing any provision of the declaration, bylaws,  
8 house rules, and this chapter, or the rules of the  
9 real estate commission;

10 against an owner, occupant, tenant, employee of an owner, or any  
11 other person who may in any manner use the property, shall be  
12 promptly paid on demand to the association by [~~such~~] the person  
13 or persons; provided that if the claims upon which the  
14 association takes any action are not substantiated, all costs  
15 and expenses, including reasonable attorneys' fees, incurred by  
16 any [~~such~~] person or persons as a result of the action of the  
17 association, shall be promptly paid on demand to such person or  
18 persons by the association~~[-]~~; provided further that if a unit  
19 owner requests dispute intervention that initiates an  
20 investigation with the ombudsman's office, costs and expenses  
21 for the investigation shall be suspended until the complaints



1 and enforcement officer completes the investigation and issues a  
2 decision on the matter.

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

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

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

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



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

5 SECTION 19. Section 514B-163, Hawaii Revised Statutes, is  
6 amended to read as follows:

7 "~~[§]514B-163[§]~~ **Trial de novo and appeal.** (a) The  
8 submission of any dispute to [~~an arbitration under section 514B-~~  
9 ~~162]~~ the ombudsman's office shall in no way limit or abridge the  
10 right of any party to a trial de novo.

11 (b) Written demand for a trial de novo by any party  
12 desiring a trial de novo shall be made upon the other parties  
13 within [~~ten]~~ sixty days after service of the [~~arbitration award]~~  
14 final decision by the ombudsman or the ombudsman's office upon  
15 all parties and the trial de novo shall be filed in circuit  
16 court within [~~thirty]~~ ninety days of the written demand.  
17 Failure to meet these deadlines shall preclude a party from  
18 demanding a trial de novo.

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



1        ~~(d)~~ (c) In any trial de novo demanded under this section,  
2 if the party demanding a trial de novo does not prevail at  
3 trial, the party demanding the trial de novo shall be charged  
4 with all reasonable costs, expenses, and attorneys' fees of the  
5 trial. When there is more than one party on one or both sides  
6 of an action, or more than one issue in dispute, the court shall  
7 allocate its award of costs, expenses, and attorneys' fees among  
8 the prevailing parties and tax ~~such~~ the fees against those  
9 nonprevailing parties who demanded a trial de novo in accordance  
10 with the principles of equity."

11        SECTION 20. Section 514B-191, Hawaii Revised Statutes, is  
12 amended by amending subsection (a) to read as follows:

13        "(a) An association, board, managing agent, resident  
14 manager, unit owner, or any person acting on behalf of an  
15 association or a unit owner shall not retaliate against a unit  
16 owner, board member, managing agent, resident manager, or  
17 association employee who, through a lawful action done in an  
18 effort to address, prevent, or stop a violation of this chapter  
19 or governing documents of the association:

20        (1) Complains or otherwise reports an alleged violation;



- 1           (2) Causes a complaint or report of an alleged violation  
2           to be filed with the association, the commission, the  
3           ombudsman's office, or other appropriate entity;
- 4           (3) Participates in or cooperates with an investigation of  
5           a complaint or report filed with the association, the  
6           commission, the ombudsman's office, or other  
7           appropriate entity;
- 8           (4) Otherwise acts in furtherance of a complaint, report,  
9           or investigation concerning an alleged violation; or
- 10          (5) Exercises or attempts to exercise any right under this  
11          chapter or the governing documents of the  
12          association."

13           SECTION 21. Section 514B-161, Hawaii Revised Statutes, is  
14 repealed.

15           ~~["§514B-161 Mediation. (a) The mediation of a dispute~~  
16 ~~between a unit owner and the board, unit owner and the managing~~  
17 ~~agent, board members and the board, or directors and managing~~  
18 ~~agents and the board shall be mandatory upon written request to~~  
19 ~~the other party when:~~



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

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

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

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

9       ~~(b) The mediation of a dispute between a unit owner and~~  
10      ~~the board, unit owner and the managing agent, board members and~~  
11      ~~the board, or directors and managing agents and the board shall~~  
12      ~~not be mandatory when the dispute involves:~~

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

15      ~~(2) Assessments;~~

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

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

20      ~~(c) If evaluative mediation is requested in writing by one~~  
21      ~~of the parties pursuant to subsection (a), the other party~~



1 ~~cannot choose to do facilitative mediation instead, and any~~  
2 ~~attempt to do so shall be treated as a rejection to mediate.~~

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

6 ~~(1) Mediation of the dispute is mandatory pursuant to~~  
7 ~~subsection (a);~~

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

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

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

18 ~~(f) Each party to a mediation shall bear the attorneys'~~  
19 ~~fees, costs, and other expenses of preparing for and~~  
20 ~~participating in mediation incurred by the party, unless~~  
21 ~~otherwise specified in:~~



- 1       ~~(1) A written agreement providing otherwise that is signed~~
- 2           ~~by the parties;~~
- 3       ~~(2) An order of a court in connection with the final~~
- 4           ~~disposition of a claim that was submitted to~~
- 5           ~~mediation;~~
- 6       ~~(3) An award of an arbitrator in connection with the final~~
- 7           ~~disposition of a claim that was submitted to~~
- 8           ~~mediation; or~~
- 9       ~~(4) An order of the circuit court in connection with~~
- 10           ~~compelled mediation in accordance with subsection (e).~~
- 11       ~~(g) Any individual mediation supported with funds from the~~
- 12       ~~condominium education trust fund pursuant to section 514B-71:~~
- 13           ~~(1) Shall include a fee of \$375 to be paid by each party~~
- 14           ~~to the mediator;~~
- 15           ~~(2) Shall receive no more from the fund than is~~
- 16           ~~appropriate under the circumstances, and in no event~~
- 17           ~~more than \$3,000 total;~~
- 18           ~~(3) May include issues and parties in addition to those~~
- 19           ~~identified in subsection (a); provided that a unit~~
- 20           ~~owner or a developer and board are parties to the~~
- 21           ~~mediation at all times and the unit owner or developer~~



1           ~~and the board mutually consent in writing to the~~  
2           ~~addition of the issues and parties; and~~

3           ~~(4) May include an evaluation by the mediator of any~~  
4           ~~claims presented during the mediation.~~

5           ~~(h) A court or an arbitrator with jurisdiction may~~  
6           ~~consider a timely request to stay any action or proceeding~~  
7           ~~concerning a dispute that would be subject to mediation pursuant~~  
8           ~~to subsection (a) in the absence of the action or proceeding,~~  
9           ~~and refer the matter to mediation; provided that:~~

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

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

14           SECTION 22. Section 514B-162, Hawaii Revised Statutes, is  
15           repealed.

16           ~~[ "~~§514B-162~~ **Arbitration.** (a) At the request of any~~  
17           ~~party, any dispute concerning or involving one or more unit~~  
18           ~~owners and an association, its board, managing agent, or one or~~  
19           ~~more other unit owners relating to the interpretation,~~  
20           ~~application, or enforcement of this chapter or the association's~~  
21           ~~declaration, bylaws, or house rules adopted in accordance with~~



1 ~~its bylaws shall be submitted to arbitration. The arbitration~~  
2 ~~shall be conducted, unless otherwise agreed by the parties, in~~  
3 ~~accordance with the rules adopted by the commission and of~~  
4 ~~chapter 658A; provided that the rules of the arbitration service~~  
5 ~~conducting the arbitration shall be used until the commission~~  
6 ~~adopts its rules; provided further that where any arbitration~~  
7 ~~rule conflicts with chapter 658A, chapter 658A shall prevail;~~  
8 ~~and provided further that notwithstanding any rule to the~~  
9 ~~contrary, the arbitrator shall conduct the proceedings in a~~  
10 ~~manner which affords substantial justice to all parties. The~~  
11 ~~arbitrator shall be bound by rules of substantive law and shall~~  
12 ~~not be bound by rules of evidence, whether or not set out by~~  
13 ~~statute, except for provisions relating to privileged~~  
14 ~~communications. The arbitrator shall permit discovery as~~  
15 ~~provided for in the Hawaii rules of civil procedure; provided~~  
16 ~~that the arbitrator may restrict the scope of such discovery for~~  
17 ~~good cause to avoid excessive delay and costs to the parties or~~  
18 ~~the arbitrator may refer any matter involving discovery to the~~  
19 ~~circuit court for disposition in accordance with the Hawaii~~  
20 ~~rules of civil procedure then in effect.~~



- 1       ~~(b) Nothing in subsection (a) shall be interpreted to~~  
2 ~~mandate the arbitration of any dispute involving:~~
- 3       ~~(1) The real estate commission;~~  
4       ~~(2) The mortgagee of a mortgage of record;~~  
5       ~~(3) The developer, general contractor, subcontractors, or~~  
6       ~~design professionals for the project; provided that~~  
7       ~~when any person exempted by this paragraph is also a~~  
8       ~~unit owner, a director, or managing agent, such person~~  
9       ~~in those capacities, shall be subject to the~~  
10       ~~provisions of subsection (a);~~
- 11       ~~(4) Actions seeking equitable relief involving threatened~~  
12       ~~property damage or the health or safety of unit owners~~  
13       ~~or any other person;~~
- 14       ~~(5) Actions to collect assessments which are liens or~~  
15       ~~subject to foreclosure; provided that a unit owner who~~  
16       ~~pays the full amount of an assessment and fulfills the~~  
17       ~~requirements of section 514B-146 shall have the right~~  
18       ~~to demand arbitration of the owner's dispute,~~  
19       ~~including a dispute about the amount and validity of~~  
20       ~~the assessment;~~
- 21       ~~(6) Personal injury claims;~~



1       ~~(7) Actions for amounts in excess of \$2,500 against an~~  
2       ~~association, a board, or one or more directors,~~  
3       ~~officers, agents, employees, or other persons, if~~  
4       ~~insurance coverage under a policy or policies procured~~  
5       ~~by the association or its board would be unavailable~~  
6       ~~because action by arbitration was pursued; or~~

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

10       ~~(c) At any time within twenty days of being served with a~~  
11 ~~written demand for arbitration, any party so served may apply to~~  
12 ~~the circuit court in the judicial circuit in which the~~  
13 ~~condominium is located for a determination that the subject~~  
14 ~~matter of the dispute is unsuitable for disposition by~~  
15 ~~arbitration.~~

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

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



- 1       ~~(2) Problems referred to the court where court regulated~~
- 2       ~~discovery is necessary;~~
- 3       ~~(3) The fact that the matter in dispute is a reasonable or~~
- 4       ~~necessary issue to be resolved in pending litigation~~
- 5       ~~and involves other matters not covered by or related~~
- 6       ~~to this chapter;~~
- 7       ~~(4) The fact that the matter to be arbitrated is only part~~
- 8       ~~of a dispute involving other parties or issues which~~
- 9       ~~are not subject to arbitration under this section; and~~
- 10       ~~(5) Any matters of dispute where disposition by~~
- 11       ~~arbitration, in the absence of complete judicial~~
- 12       ~~review, would not afford substantial justice to one or~~
- 13       ~~more of the parties.~~

14       ~~Any such application to the circuit court shall be made and~~

15 ~~heard in a summary manner and in accordance with procedures for~~

16 ~~the making and hearing of motions. The prevailing party shall~~

17 ~~be awarded its attorneys' fees and costs in an amount not to~~

18 ~~exceed \$200.~~

19       ~~(d) In the event of a dispute as to whether a claim shall~~

20 ~~be excluded from mandatory arbitration under subsection (b) (7),~~

21 ~~any party to an arbitration may file a complaint for declaratory~~



1 ~~relief against the involved insurer or insurers for a~~  
2 ~~determination of whether insurance coverage is unavailable due~~  
3 ~~to the pursuit of action by arbitration. The complaint shall be~~  
4 ~~filed with the circuit court in the judicial circuit in which~~  
5 ~~the condominium is located. The insurer or insurers shall file~~  
6 ~~an answer to the complaint within twenty days of the date of~~  
7 ~~service of the complaint and the issue shall be disposed of by~~  
8 ~~the circuit court at a hearing to be held at the earliest~~  
9 ~~available date; provided that the hearing shall not be held~~  
10 ~~within twenty days from the date of service of the complaint~~  
11 ~~upon the insurer or insurers.~~

12 ~~(e) Notwithstanding any provision in this chapter to the~~  
13 ~~contrary, the declaration, or the bylaws, the award of any~~  
14 ~~costs, expenses, and legal fees by the arbitrator shall be in~~  
15 ~~the sole discretion of the arbitrator and the determination of~~  
16 ~~costs, expenses, and legal fees shall be binding upon all~~  
17 ~~parties.~~

18 ~~(f) The award of the arbitrator shall be in writing and~~  
19 ~~acknowledged or proved in like manner as a deed for the~~  
20 ~~conveyance of real estate, and shall be served by the arbitrator~~  
21 ~~on each of the parties to the arbitration, personally or by~~



1 ~~registered or certified mail. At any time within one year after~~  
2 ~~the award is made and served, any party to the arbitration may~~  
3 ~~apply to the circuit court of the judicial circuit in which the~~  
4 ~~condominium is located for an order confirming the award. The~~  
5 ~~court shall grant the order confirming the award pursuant to~~  
6 ~~section 658A-22, unless the award is vacated, modified, or~~  
7 ~~corrected, as provided in sections 658A-20, 658A-23, and~~  
8 ~~658A-24, or a trial de novo is demanded under subsection (h), or~~  
9 ~~the award is successfully appealed under subsection (h). The~~  
10 ~~record shall be filed with the motion to confirm award, and~~  
11 ~~notice of the motion shall be served upon each other party or~~  
12 ~~their respective attorneys in the manner required for service of~~  
13 ~~notice of a motion.~~

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

18 ~~(h) Any party to an arbitration under this section may~~  
19 ~~apply to vacate, modify, or correct the arbitration award for~~  
20 ~~the grounds set out in chapter 658A. All reasonable costs,~~



1 ~~expenses, and attorneys' fees on appeal shall be charged to the~~  
2 ~~nonprevailing party."]~~

3 SECTION 23. Section 514B-162.5, Hawaii Revised Statutes,  
4 is repealed.

5 ~~["~~{514B-162.5} Voluntary binding arbitration.~~ (a) Any~~  
6 ~~parties permitted to mediate condominium related disputes~~  
7 ~~pursuant to section 514B-161 may agree to enter into voluntary~~  
8 ~~binding arbitration, which may be supported with funds from the~~  
9 ~~condominium education trust fund pursuant to section 514B-71;~~  
10 ~~provided that voluntary binding arbitration under this section~~  
11 ~~may be supported with funds from the condominium education trust~~  
12 ~~fund only after the parties have first attempted evaluative~~  
13 ~~mediation.~~

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

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

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



1       ~~(3) May include issues and parties in addition to those~~  
2       ~~identified in subsection (a); provided that a unit~~  
3       ~~owner or a developer and board are parties to the~~  
4       ~~arbitration at all times and the unit owner or~~  
5       ~~developer and the board mutually consent in writing to~~  
6       ~~the addition of the issues and parties." ]~~

7       SECTION 24. There is appropriated out of the condominium  
8 education trust fund the sum of \$                    or so much thereof  
9 as may be necessary for fiscal year 2024-2025 to be deposited  
10 into the into the ombudsman's office special fund.

11       SECTION 25. There is appropriated out of the ombudsman's  
12 office special fund the sum of \$                    or so much thereof as  
13 may be necessary for fiscal year 2024-2025 for the  
14 administrative costs associated with the establishment of the  
15 ombudsman's office within the department of commerce and  
16 consumer affairs, including the hiring of necessary staff.

17       The sum appropriated shall be expended by the department of  
18 commerce and consumer affairs for the purposes of this Act.

19       SECTION 26. In codifying the new sections added by  
20 section 2 of this Act, the revisor of statutes shall substitute



1 appropriate section numbers for the letters used in designating  
2 the new sections in this Act.

3 SECTION 27. Statutory material to be repealed is bracketed  
4 and stricken. New statutory material is underscored.

5 SECTION 28. This Act shall take effect on January 1, 2025;  
6 provided that sections 24 and 25 shall take effect on July 1,  
7 2024.

8

INTRODUCED BY: \_\_\_\_\_

A handwritten signature in black ink, appearing to read "Shellyn Walsh", is written over a horizontal line. The signature is stylized and cursive.

# S.B. NO. 3205

**Report Title:**

DCCA; Condominiums; Condominium Associations; Ombudsman's Office; Dispute Intervention; Complaints and Enforcement Officers; Intake Specialists; Condominium Education Trust Fund; Ombudsman's Office Special Fund; Appropriations

**Description:**

Establishes the Ombudsman's Office for condominium associations within the Department of Commerce and Consumer Affairs. Establishes the Ombudsman's Office Special Fund. Requires condominium association board members to meet certain educational requirements through classes offered by the Ombudsman. Updates the Condominium Property Act to integrate the role and functions of the ombudsman's office for condominium associations. Appropriates funds for establishment of the Ombudsman's Office. Effective 1/1/2025.

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

