



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

3       Based on reviews of the department of commerce and consumer  
4 affairs reports published in Hawaii condominium bulletins since  
5 2016, mediation subsidized by the condominium education trust  
6 fund has not been successful, with thirty-eight per cent  
7 mediated to "no agreement", thirty-seven per cent mediated "to  
8 agreement", and most of the remaining twenty-five per cent  
9 withdrawn because one or more parties declined to participate.

10       The results of arbitration cases subsidized by the  
11 department of commerce and consumer affairs are not available.  
12 However, arbitration is recognized as an expensive means of  
13 dispute resolution and the expense of the undertaking can be  
14 cost prohibitive, resulting in a denial of justice for  
15 association members.

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



1 PART II

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

5 "CHAPTER  
6 OMBUDSMAN'S OFFICE FOR HOMEOWNER ASSOCIATIONS

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

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

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

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

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



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

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

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

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

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

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



1           §   -2   **Ombudsman's office for homeowner associations**  
2   **established; association ombudsman; criteria for ombudsman.** (a)

3   There is established within the department an ombudsman's office  
4   for homeowner associations. The ombudsman's office for  
5   homeowner associations shall be headed by the association  
6   ombudsman, who shall be appointed by the director with the  
7   approval of the governor.

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

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

16           (2) Serve as the representative, executive, officer, or  
17               employee of any political party, executive committee,  
18               or other governing body of a political party;

19           (3) Receive remuneration for activities on behalf of any  
20               candidate for public office;



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

6           The ombudsman shall be exempt from chapter 76.

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

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

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



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

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

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

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

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



1 or investigation of complaints or requests for dispute  
2 intervention;

3 (2) Develop educational classes and required  
4 certifications for all members of a homeowner  
5 association board to ensure that they are aware of  
6 their responsibilities and duties and are familiar  
7 with this chapter, other relevant statutes and  
8 administrative rules, and their governing documents;

9 (3) In conjunction with the department, and using funds  
10 from the condominium education trust fund and  
11 assessments collected for this purpose under chapters  
12 421I and 421J, educate the public and entities  
13 required to be registered or certified under homeowner  
14 association laws;

15 (4) Have access to and use of all files and records of the  
16 department;

17 (5) Act as a liaison between unit owners, homeowner  
18 association boards, board members, homeowner  
19 association management, managing agents and their  
20 employees, and other affected parties;



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



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



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



1 (17), the ombudsman may submit a report to the  
2 governor or the legislature or publish the report,  
3 including any reply by the department, and notify the  
4 complainant of the actions taken by the ombudsman and  
5 the department;

6 (19) Ensure that homeowner association members have access  
7 to the services provided through the ombudsman's  
8 office and that homeowner association members receive  
9 responses from the ombudsman's office within thirty  
10 days of the member's inquiry;

11 (20) Maintain publicly available data on inquiries and  
12 complaints received, types of assistance requested,  
13 notices of final decisions and actions taken, and  
14 disposition of matters;

15 (21) Monitor changes in federal and state laws relating to  
16 homeowner associations;

17 (22) Assist unit owners with disputes concerning homeowner  
18 association elections or meetings, including  
19 recommending that the department pursue an enforcement  
20 action in any matter where the ombudsman has



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



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

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

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



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

5 (1) The nature of the dispute;

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

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

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

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

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

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



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

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

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



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

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

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

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

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



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

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

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

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



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

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

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

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

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



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

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

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

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

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

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

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

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



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

12 PART III

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

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



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

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



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

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

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

6 "Corporation" means a cooperative housing corporation that:

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



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

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

5       "(a) A meeting of the corporation for the purpose of  
6 electing the board of directors shall be held not later than one  
7 hundred eighty days after the first conveyance of a dwelling  
8 unit to a shareholder, if at least forty per cent of the  
9 dwelling units have been conveyed by that time. If forty per  
10 cent of the dwelling units have not been conveyed within one  
11 year after the first conveyance, the meeting of the corporation  
12 may be held upon the call of the owners of at least ten per cent  
13 of the shares by a petition presented to the secretary of the  
14 corporation.

15       (b) Every member of the board of directors shall be:  
16       (1) A shareholder of the [~~cooperation,~~] corporation;  
17       (2) A spouse of a shareholder; or  
18       (3) A trust beneficiary, if the shareholder is a trustee."

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



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

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

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

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



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

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

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

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

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

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



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

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

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

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



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

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

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

11 PART IV

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

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



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

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



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

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

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

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



1            [~~(a) All~~] (b) If no request for dispute intervention is  
2 made, all costs and expenses, including reasonable attorneys'  
3 fees, incurred by or on behalf of the association for:

4            (1) Collecting any delinquent assessments against any unit  
5                            or the owner of any unit;

6            (2) Foreclosing any lien on any unit; or

7            (3) Enforcing any provision of the association documents  
8                            or this chapter;

9 against a member, occupant, tenant, employee of a member, or any  
10 other person who in any manner may use the property, shall be  
11 promptly paid on demand to the association by such person or  
12 persons; provided that if the association is not the prevailing  
13 party, all costs and expenses, including reasonable attorneys'  
14 fees, incurred by any such person or persons as a result of the  
15 action of the association, shall be promptly paid on demand to  
16 the person by the association. The reasonableness of any  
17 attorney's fees paid by a person or by an association as a  
18 result of an action pursuant to paragraph (2) shall be  
19 determined by the court.

20            [~~(b)~~] (c) If any member is the prevailing party in any  
21 action against an association[~~7~~] pursuant to subsection (b), any



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

7 (1) The member first shall have demanded and allowed  
8 reasonable time for the board of directors to pursue  
9 an enforcement action; or

10 (2) The member demonstrates to the satisfaction of the  
11 court that a demand for enforcement made to the board  
12 of directors would have been fruitless.

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



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

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

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

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

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



- 1           (5) That a unit owner has a right to [~~demand mediation~~]  
2           request a dispute intervention pursuant to  
3           section -5 to resolve disputes about the amount or  
4           validity of an association's assessment; provided  
5           that, if required by chapter or the ombudsman, the  
6           unit owner immediately pays the assessment in full and  
7           keeps assessments current; and
- 8           (6) That payment in full of the assessment does not  
9           prevent the unit owner from contesting the assessment  
10          or receiving a refund of amounts not owed.

11 Nothing in this section shall limit the rights of a unit owner  
12 to the protection of all fair debt collection procedures  
13 mandated under federal and state law.

- 14          (d) A unit owner who pays an association the full amount  
15 claimed by the association may file a claim against the  
16 association in court, including small claims court, or require  
17 the association to [~~mediate~~] participate in dispute intervention  
18 under section 421J-13 to resolve any disputes concerning the  
19 amount or validity of the association's claim. If the unit  
20 owner and the association are unable to resolve the dispute  
21 through [~~mediation~~] the request for dispute intervention



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

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

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



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

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

5 "~~[§]421J-13[§] Mediation of disputes.~~ Dispute

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

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

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

21 (2) Actions to collect assessments;



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

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

14 PART V

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

18 "§514B- Board members; education requirement. Every  
19 existing member of a board shall take the educational classes  
20 established by the ombudsman's office and obtain a certificate  
21 of satisfactory completion within three months of the classes



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

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

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

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



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

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

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

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

19       "**§514B-71 Condominium education trust fund.** (a) The  
20 commission shall establish a condominium education trust fund  
21 that the commission and ombudsman's office shall use for



1 educational purposes. Educational purposes shall include  
2 financing or promoting:

3 (1) Education and research in the field of condominium  
4 management, condominium project registration, and real  
5 estate, for the benefit of the public and those  
6 required to be registered under this chapter;

7 (2) The improvement and more efficient administration of  
8 associations; and

9 (3) Expeditious and inexpensive procedures for resolving  
10 association disputes[+

11 ~~(4) Support for mediation of condominium related disputes;~~  
12 ~~and~~

13 ~~(5) Support for voluntary binding arbitration between~~  
14 ~~parties in condominium related disputes, pursuant to~~  
15 ~~section 514B-162.5].~~

16 (b) The commission shall use all moneys in the condominium  
17 education trust fund for purposes consistent with subsection  
18 (a) [−]; provided that one hundred per cent of the fees required  
19 by chapter \_\_\_\_\_ to be deposited into the trust fund shall be  
20 transferred to the ombudsman's office special fund established  
21 under section \_\_\_\_\_ -9 for use by the ombudsman's office. Any law



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

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



1 The balance of the fund shall not exceed a sum determined by the  
2 commission. The sum shall be determined by the commission  
3 biennially."

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

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

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

14 (2) Beginning with the July 1, ~~[2015]~~ 2025, biennium  
15 registration, an additional annual condominium  
16 education trust fund fee in an amount equal to the  
17 product of ~~[\$1.50]~~ \$12.50 times the number of  
18 condominium units included in the registered project  
19 or association to be dedicated to supporting  
20 ~~[mediation or voluntary binding arbitration of~~  
21 ~~condominium related disputes.]~~ the ombudsman's office.



1           The additional condominium education trust fund fee  
2           shall total [~~\$3~~] \$25 per unit until the commission  
3           adopts rules pursuant to chapter 91. On June 30 of  
4           every odd-numbered year, any unexpended additional  
5           amounts paid into the condominium education trust fund  
6           ~~[and initially dedicated to supporting mediation or~~  
7           ~~voluntary binding arbitration of condominium related~~  
8           ~~disputes]~~, as required by this paragraph, shall be  
9           used for educational purposes as provided in section  
10          514B-71(a)(1), (2), and (3)."

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

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



1 514B-72 for educational purposes, including the establishment of  
2 educational classes and the necessary purchase of equipment and  
3 supplies required by the ombudsman's office to carry out its  
4 responsibilities under chapter \_\_\_\_\_."

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

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

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



- 1 actions under chapter 480, associations shall be  
2 deemed to be "consumers";
- 3 (5) Make contracts and incur liabilities;
- 4 (6) Regulate the use, maintenance, repair, replacement,  
5 and modification of common elements;
- 6 (7) Cause additional improvements to be made as a part of  
7 the common elements;
- 8 (8) Acquire, hold, encumber, and convey in its own name  
9 any right, title, or interest to real or personal  
10 property; provided that:
- 11 (A) Designation of additional areas to be common  
12 elements or subject to common expenses after the  
13 initial filing of the declaration or bylaws shall  
14 require the approval of at least sixty-seven per  
15 cent of the unit owners;
- 16 (B) If the developer discloses to the initial buyer  
17 in writing that additional areas will be  
18 designated as common elements whether pursuant to  
19 an incremental or phased project or otherwise,  
20 the requirements of this paragraph shall not  
21 apply as to those additional areas; and



1 (C) The requirements of this paragraph shall not  
2 apply to the purchase of a unit for a resident  
3 manager, which may be purchased [~~with the~~  
4 ~~approval of the board;~~] through a provision in  
5 the bylaws;

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

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

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



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



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



1 SECTION 23. Section 514B-105, Hawaii Revised Statutes, is  
2 amended to read as follows:

3 **"§514B-105 Association; limitations on powers.** (a) The  
4 declaration and bylaws shall not impose limitations on the power  
5 of the association to deal with the developer that are more  
6 restrictive than the limitations imposed on the power of the  
7 association to deal with other persons.

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

- 12 (1) Prevent any use of a unit that violates the  
13 declaration or bylaws;
- 14 (2) Regulate any behavior in or occupancy of a unit that  
15 violates the declaration or bylaws or unreasonably  
16 interferes with the use and enjoyment of other units  
17 or the common elements by other unit owners; or
- 18 (3) Restrict the leasing of residential units to the  
19 extent those rules are reasonably designed to meet  
20 underwriting requirements of institutional lenders who  
21 regularly lend money secured by first mortgages on



1 units in condominiums or regularly purchase those  
2 mortgages.

3 Otherwise, the association shall not regulate any use of or  
4 behavior in units by means of the rules and regulations.

5 (c) Any payments made by or on behalf of a unit owner  
6 shall first be applied to outstanding common expenses that are  
7 assessed to all unit owners in proportion to the common interest  
8 appurtenant to their respective units, including commercial  
9 property assessed financing assessment expenses incurred for  
10 improvements financed pursuant to section 196-64.5. Only after  
11 the outstanding common expenses have been paid in full may the  
12 payments be applied to other charges owed to the association,  
13 including assessed charges to the unit such as ground lease  
14 rent, utility sub-metering, storage lockers, parking stalls,  
15 boat slips, insurance deductibles, and cable. After these  
16 charges are paid, other charges, including unpaid late fees,  
17 legal fees, fines, and interest, may be assessed in accordance  
18 with an application of payment policy adopted by the board;  
19 provided that if a unit owner has designated that any payment is  
20 for a specific charge that is not a common expense as described  
21 in this subsection, the payment may be applied in accordance



1 with the unit owner's designation even if common expenses remain  
2 outstanding.

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

15 After being notified of the reasonable cost of providing  
16 the information, the unit owner may withdraw the request, in  
17 writing. A unit owner who withdraws a request for information  
18 shall not be charged for the reasonable cost of providing the  
19 information.

20 (e) Subject to any approval requirements and spending  
21 limits contained in the declaration or bylaws, the association



1 may authorize the board to borrow money for the repair,  
2 replacement, maintenance, operation, or administration of the  
3 common elements and personal property of the project, or the  
4 making of any additions, alterations, and improvements thereto;  
5 provided that the board shall make available any reports  
6 provided by licensed or certified professionals that document  
7 the necessity and urgency of that expenditure, provide to all  
8 unit owners a written notice of the purpose and use of the funds  
9 [is first sent to all unit owners and owners], and hold a  
10 special meeting to discuss the expenditure and review the  
11 reports. Owners representing more than fifty per cent of the  
12 common interest shall vote [or] and give written consent to the  
13 borrowing. In connection with the borrowing, including  
14 non-commercial property assessed financing, the board may grant  
15 to the lender the right to assess and collect monthly or special  
16 assessments from the unit owners and to enforce the payment of  
17 the assessments or other sums by statutory lien and foreclosure  
18 proceedings. The cost of the borrowing, including, without  
19 limitation, all principal, interest, commitment fees, and other  
20 expenses payable with respect to the borrowing or the  
21 enforcement of the obligations under the borrowing, shall be a



1 common expense of the project. For purposes of this section,  
2 the financing of insurance premiums by the association within  
3 the policy period shall not be deemed a loan and no lease shall  
4 be deemed a loan if it provides that at the end of the lease the  
5 association may purchase the leased equipment for its fair  
6 market value.

7 (f) For financing assessments imposed upon the project  
8 under a commercial property assessed financing program pursuant  
9 to section 196-64.5 and due from the association, the cost of  
10 the commercial property assessed financing, including all  
11 principal, interest, commitment fees, servicing fees, and other  
12 expenses payable with respect to this borrowing or the  
13 enforcement of the obligations under the borrowing, shall be a  
14 common expense of the project and the unit owners' proportionate  
15 share of the financing assessment shall be collected in the same  
16 manner as common expenses. The written consent of at least  
17 fifty per cent of all unit owners to finance qualifying  
18 improvements with commercial property assessed financing shall  
19 include an acknowledgment that the annual financing assessment  
20 required to fund debt service on the commercial property



1 assessed financing shall be included as part of the  
2 association's adopted revised budget.

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

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

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



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

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

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

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

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



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

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

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

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

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



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



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



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

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

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

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



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



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

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

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

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

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

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



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

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

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

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

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



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

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

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

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

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



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

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

8 (2) An accurate copy of the declaration, bylaws, house  
9 rules, if any, master lease, if any, a sample original  
10 conveyance document, and all public reports and any  
11 amendments thereto;

12 (3) Detailed, accurate records in chronological order of  
13 the receipts and expenditures affecting the common  
14 elements, specifying and itemizing the maintenance and  
15 repair expenses of the common elements and any other  
16 expenses incurred and monthly statements indicating  
17 the total current delinquent dollar amount of any  
18 unpaid assessments for common expenses;

19 (4) All records and the vouchers authorizing the payments  
20 and statements kept and maintained at the address of



1 the project, or elsewhere within the State as  
2 determined by the board, subject to section 514B-152;

3 (5) All signed and executed agreements for managing the  
4 operation of the property, expressing the agreement of  
5 all parties, including but not limited to financial  
6 and accounting obligations, services provided, and any  
7 compensation arrangements, including any subsequent  
8 amendments;

9 (6) An accurate and current list of members of the  
10 condominium association and the members' current  
11 addresses and the names and addresses of the vendees  
12 under an agreement of sale, if any. A copy of the  
13 list shall be available, at cost, to any unit owner or  
14 owner's authorized agent who furnishes to the managing  
15 agent, resident manager, or the board a duly executed  
16 and acknowledged affidavit stating that the list:

17 (A) Shall be used by the unit owner or owner's  
18 authorized agent personally and only for the  
19 purpose of soliciting votes or proxies or for  
20 providing information to other unit owners with  
21 respect to association matters; and



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



1 the owner or owner's authorized agent; provided  
2 that:

3 (i) The minutes shall be transmitted by mail,  
4 electronic mail transmission, or facsimile,  
5 by the means indicated by the owner or  
6 owner's authorized agent, if the owner or  
7 owner's authorized agent indicated a  
8 preference at the time of the request; and

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

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



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



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

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



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

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

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



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

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

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



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

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

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

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

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



1        (1) Responding to written or oral inquiries, comments,  
2        complaints, or requests for dispute intervention by  
3        unit owners regarding condominium operations, property  
4        usage, board fiduciary duties, common elements, and  
5        resident actions;

6        (2) Expressing unit owners' intentions to challenge the  
7        existing declaration, bylaws, and rules of the  
8        association; or

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

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

15       (1) Collecting any delinquent assessments, including  
16       commercial property assessed financing assessments  
17       imposed pursuant to section 196-64.5, against any  
18       owner's unit;

19       (2) Foreclosing any lien thereon; or



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

17           ~~(b)~~ (c) If any claim by an owner is substantiated in any  
18 action against an association, any of its officers or directors,  
19 or its board to enforce any provision of the declaration,  
20 bylaws, house rules, or this chapter, then all reasonable and  
21 necessary expenses, costs, and attorneys' fees incurred by an



1 owner shall be awarded to [~~such~~] the owner; provided that no  
2 such award shall be made in any derivative action unless:

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

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

9 If any claim by an owner is not substantiated in any court  
10 action against an association, any of its officers or directors,  
11 or its board to enforce any provision of the declaration,  
12 bylaws, house rules, or this chapter, then all reasonable and  
13 necessary expenses, costs, and attorneys' fees incurred by an  
14 association shall be awarded to the association, unless before  
15 filing the action in court the owner has first submitted the  
16 claim to [~~mediation, or to arbitration under subpart D,~~] dispute  
17 intervention under the ombudsman's office and made a good faith  
18 effort to resolve the dispute [~~under any of those procedures~~]."

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



1           "~~[f]~~§514B-163~~[t]~~ **Trial de novo and appeal.** (a) The  
2 submission of any dispute to ~~[an arbitration under section~~  
3 ~~514B-162]~~ the ombudsman's office shall in no way limit or  
4 abridge the right of any party to a trial de novo.

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

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

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



1 the prevailing parties and tax such fees against those  
2 nonprevailing parties who demanded a trial de novo in accordance  
3 with the principles of equity."

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

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

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



- 1 (4) Otherwise acts in furtherance of a complaint, report,  
2 or investigation concerning an alleged violation; or  
3 (5) Exercises or attempts to exercise any right under this  
4 chapter or the governing documents of the  
5 association."

6 SECTION 32. Section 514B-161, Hawaii Revised Statutes, is  
7 repealed.

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

- 13 ~~(1) The dispute involves the interpretation or enforcement~~  
14 ~~of the association's declaration, bylaws, or house~~  
15 ~~rules;~~  
16 ~~(2) The dispute falls outside the scope of subsection (b);~~  
17 ~~(3) The parties have not already mediated the same or a~~  
18 ~~substantially similar dispute; and~~  
19 ~~(4) An action or an arbitration concerning the dispute has~~  
20 ~~not been commenced.~~



1       ~~(b) The mediation of a dispute between a unit owner and~~  
2 ~~the board, unit owner and the managing agent, board members and~~  
3 ~~the board, or directors and managing agents and the board shall~~  
4 ~~not be mandatory when the dispute involves:~~

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

7       ~~(2) Assessments;~~

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

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

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

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

19       ~~(1) Mediation of the dispute is mandatory pursuant to~~  
20 ~~subsection (a);~~



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

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

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

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

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

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



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



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

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

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

10       SECTION 33. Section 514B-162, Hawaii Revised Statutes, is  
11       repealed.

12       ~~["**[S514B-162] Arbitration.** (a) At the request of any~~  
13       ~~party, any dispute concerning or involving one or more unit~~  
14       ~~owners and an association, its board, managing agent, or one or~~  
15       ~~more other unit owners relating to the interpretation,~~  
16       ~~application, or enforcement of this chapter or the association's~~  
17       ~~declaration, bylaws, or house rules adopted in accordance with~~  
18       ~~its bylaws shall be submitted to arbitration. The arbitration~~  
19       ~~shall be conducted, unless otherwise agreed by the parties, in~~  
20       ~~accordance with the rules adopted by the commission and of~~  
21       ~~chapter 658A; provided that the rules of the arbitration service~~



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

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

19 ~~(1) The real estate commission;~~

20 ~~(2) The mortgagee of a mortgage of record;~~



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



1           ~~by the association or its board would be unavailable~~  
2           ~~because action by arbitration was pursued; or~~  
3       ~~(8) Any other cases which are determined, as provided in~~  
4           ~~subsection (c), to be unsuitable for disposition by~~  
5           ~~arbitration.~~

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

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

- 14       ~~(1) The magnitude of the potential award, or any issue of~~  
15           ~~broad public concern raised by the subject matter~~  
16           ~~underlying the dispute;~~  
17       ~~(2) Problems referred to the court where court regulated~~  
18           ~~discovery is necessary;~~  
19       ~~(3) The fact that the matter in dispute is a reasonable or~~  
20           ~~necessary issue to be resolved in pending litigation~~

1 ~~and involves other matters not covered by or related~~  
2 ~~to this chapter;~~

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

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

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

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



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

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

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



1 ~~court shall grant the order confirming the award pursuant to~~  
2 ~~section 658A-22, unless the award is vacated, modified, or~~  
3 ~~corrected, as provided in sections 658A-20, 658A-23, and~~  
4 ~~658A-24, or a trial de novo is demanded under subsection (h), or~~  
5 ~~the award is successfully appealed under subsection (h). The~~  
6 ~~record shall be filed with the motion to confirm award, and~~  
7 ~~notice of the motion shall be served upon each other party or~~  
8 ~~their respective attorneys in the manner required for service of~~  
9 ~~notice of a motion.~~

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

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

19 SECTION 34. Section 514B-162.5, Hawaii Revised Statutes,  
20 is repealed.



1           ~~["§514B-162.5] Voluntary binding arbitration.~~ (a) Any  
2 ~~parties permitted to mediate condominium related disputes~~  
3 ~~pursuant to section 514B-161 may agree to enter into voluntary~~  
4 ~~binding arbitration, which may be supported with funds from the~~  
5 ~~condominium education trust fund pursuant to section 514B-71,~~  
6 ~~provided that voluntary binding arbitration under this section~~  
7 ~~may be supported with funds from the condominium education trust~~  
8 ~~fund only after the parties have first attempted evaluative~~  
9 ~~mediation.~~

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

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

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

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           ~~arbitration at all times and the unit owner or~~





1 SECTION 38. Statutory material to be repealed is bracketed  
2 and stricken. New statutory material is underscored.

3 SECTION 39. This Act shall take effect on January 1, 2026;  
4 provided that sections 35 and 36 shall take effect on July 1,  
5 2025.

6

INTRODUCED BY: Mya A. Allen (B/R)



# S.B. NO. 1498

**Report Title:**

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

**Description:**

Establishes an Ombudsman's Office for homeowner associations within the Department of Commerce and Consumer Affairs. Establishes an Ombudsman's Office Special Fund. Requires board members of condominium associations, cooperative housing corporations, and planned community associations to meet certain educational requirements through classes offered by the ombudsman. Updates statutes relating to condominium associations, cooperative housing corporations, and planned community associations to integrate the role and functions of the ombudsman's office for homeowner associations. Appropriates funds for establishment of the ombudsman's office.

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

