
A BILL FOR AN ACT

RELATING TO CONDOMINIUM ASSOCIATIONS.

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

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



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

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7 three cases unresolved, mediated to "no agreement," or withdrawn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

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

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



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

6 Additionally, owners who continued the mediation process
7 reported feeling compelled to retain an attorney, often at a
8 prohibitive cost, because the association was represented by an
9 attorney and, in many cases, with additional legal assistance
10 from the attorneys representing the association's insurer.

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

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



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

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

12 Accordingly, the purpose of this Act is to:

13 (1) Establish within the department of commerce and
14 consumer affairs an ombudsman's office for condominium
15 associations to:

16 (A) Serve as a neutral resource for members of
17 condominium associations and the public;

18 (B) Provide an office for condominium association
19 unit owners, boards, board members, association
20 management, and managing agents to bring



1 complaints for investigation and dispute
2 resolution;

3 (C) Ensure compliance with existing laws and
4 association governing documents;

5 (D) Resolve disputes without burdensome and excessive
6 legal expenses, which include attorneys fees,
7 mediation costs beyond what is subsidized, court
8 costs, lost wages for missed work, and other
9 costs;

10 (E) Ensure association members have access to
11 association documents;

12 (F) The ombudsman shall develop policies and
13 procedures to assist unit owners, boards of
14 directors, board members, community association
15 managers, and other affected parties to
16 understand their rights and responsibilities as
17 set forth in chapter 514B, Hawaii Revised
18 Statutes, and the condominium documents governing
19 their respective association; and

20 (G) Maintain data on inquiries and complaints
21 received, types of assistance requested, notices



1 of decisions, actions taken, and the disposition
2 of matters; and

3 (2) Establish funding for the ombudsman's office for
4 condominium associations from the condominium
5 education trust fund, with no impact on the State's
6 general fund.

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

10 "PART

11 OMBUDSMAN'S OFFICE FOR CONDOMINIUM ASSOCIATIONS

12 §514B-A Ombudsman's office for condominium associations
13 established; ombudsman; criteria for ombudsman. (a) There is
14 established within the department of commerce and consumer
15 affairs an ombudsman's office for condominium associations. The
16 ombudsman's office for condominium associations shall be headed
17 by the ombudsman for condominium associations, who shall be
18 appointed by the director of commerce and consumer affairs with
19 the approval of the governor.

20 (b) The ombudsman shall have been admitted to practice law
21 before the Hawaii supreme court and shall have extensive



1 experience in Hawaii real estate, condominium association law,
2 and conflict and alternative dispute resolution. The ombudsman
3 shall not:

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

8 (2) Serve as the representative, executive, officer, or
9 employee of any political party, executive committee,
10 or other governing body of a political party;

11 (3) Receive remuneration for activities on behalf of any
12 candidate for public office;

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

15 (5) Become a candidate for election to public office
16 unless the ombudsman first resigns.

17 (c) The ombudsman shall be exempt from chapter 76.

18 **§514B-B Personnel; salary; benefits.** (a) The ombudsman
19 shall employ professional and clerical staff as necessary for
20 the efficient operation of the ombudsman's office. The
21 ombudsman may appoint persons who have been admitted to practice



1 law before the Hawaii supreme court as staff without regard to
2 chapter 76. All other employees shall be appointed by the
3 ombudsman in accordance with chapter 76.

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

10 (c) The ombudsman's office shall integrate the existing
11 condominium specialist positions in the department of commerce
12 and consumer affairs into the ombudsman's office as intake
13 specialists for complaints submitted to the ombudsman's office.

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

16 (e) The salary of the ombudsman shall be determined by the
17 director of commerce and consumer affairs. The ombudsman,
18 complaints and enforcement officers, intake specialists, and
19 other personnel shall be included in any benefits program
20 generally applicable to officers and employees of the State.



1 **§514B-C Ombudsman; powers and duties; immunity from**
2 **liability.** (a) The ombudsman shall:

- 3 (1) Have the power to establish rules pursuant to
4 chapter 91 for the operation of the office that shall
5 include receiving and processing complaints and
6 requests for dispute intervention and resolution;
7 conducting investigations; enforcement, including
8 fines and penalties; and reporting the findings of the
9 office; provided that the ombudsman shall levy nominal
10 filing fees not to exceed \$100 to deter frivolous
11 submissions or investigations of complaints or
12 requests for dispute intervention and resolution;
- 13 (2) Have access to and use of all files and records of the
14 department of commerce and consumer affairs;
- 15 (3) Act as a liaison between unit owners, boards, board
16 members, association management, managing agents and
17 their employees, and other affected parties;
- 18 (4) Act as a neutral resource for the rights and
19 responsibilities of unit owners, associations, boards
20 of directors, board members, managers, and any
21 affected parties to encourage and facilitate voluntary



1 meetings with and between these entities when meetings
2 may assist in resolving a dispute prior to any party
3 submitting a formal request for dispute intervention
4 and resolution;

5 (5) Assist unit owners in understanding their rights and
6 the processes available to them according to the laws
7 and rules governing condominium associations;

8 (6) Respond to general inquiries, make recommendations,
9 and give guidance as necessary to assist unit owners
10 and boards;

11 (7) Make available, either separately or through an
12 existing website, or both, information concerning
13 associations and any additional information the
14 ombudsman may deem appropriate and non-confidential;

15 (8) Receive written requests for dispute intervention and
16 resolution;

17 (9) Investigate and assist in resolving disputes brought
18 by unit owners, associations, boards, and board
19 members, under section 514B-D;

20 (10) Investigate acts that may be:



- 1 (A) Contrary to law or an association's governing
2 rules;
- 3 (B) Unreasonable, unfair, oppressive, retaliatory, or
4 discriminatory as administered or under the
5 circumstances;
- 6 (C) Based on a mistake of fact;
- 7 (D) Based on improper or irrelevant grounds;
- 8 (E) Unaccompanied by an adequate statement of
9 reasons; or
- 10 (F) Otherwise erroneous;
- 11 (11) Subject to the privileges that witnesses have in the
12 courts of the State, have the authority to:
- 13 (A) Compel at a specified time and place, by a
14 subpoena, the appearance and sworn testimony of
15 any person whom the ombudsman reasonably believes
16 may have information relating to a matter under
17 investigation; and
- 18 (B) Compel any person to produce documents, records,
19 and information the ombudsman reasonably believes
20 may relate to a matter under investigation;



- 1 (12) Be authorized to bring suit in an appropriate state
- 2 court to enforce the powers in paragraph (11);
- 3 (13) Provide advisory opinions upon request from unit
- 4 owners or other affected parties;
- 5 (14) Provide recommendations to the director of commerce
- 6 and consumer affairs if the ombudsman finds that:
- 7 (A) The matter should be further considered by the
- 8 department of commerce and consumer affairs;
- 9 (B) A statute or rule should be amended or repealed;
- 10 and
- 11 (C) Other action should be taken by the department of
- 12 commerce and consumer affairs;
- 13 (15) Within a reasonable time after providing
- 14 recommendations to the director of commerce and
- 15 consumer affairs pursuant to paragraph (14), the
- 16 ombudsman may submit a report to the governor or the
- 17 legislature or publish the report, including any reply
- 18 by the department of commerce and consumer affairs,
- 19 and notify the complainant of the actions taken by the
- 20 ombudsman and the department;



- 1 (16) Ensure that association members have access to the
2 services provided through the ombudsman's office and
3 that association members receive responses from the
4 ombudsman's office within thirty days of the member's
5 inquiry;
- 6 (17) Maintain publicly available data on inquiries and
7 complaints received, types of assistance requested,
8 notices of final decisions and actions taken, and
9 disposition of matters;
- 10 (18) Monitor changes in federal and state laws relating to
11 associations;
- 12 (19) Have the authority to remove from the board any board
13 member of an association who is found to have
14 committed wilful misconduct in violation of any laws
15 or the condominium's governing documents;
- 16 (20) Provide to the governor and the public an annual
17 report that includes the number and types of requests
18 for dispute intervention and resolution submitted to
19 the ombudsman's office and their disposition, and any
20 suggestions for policy or legislation the ombudsman's



1 office deems necessary to more quickly and efficiently
2 resolve condominium disputes; and

3 (21) Adopt rules pursuant to chapter 91 necessary to carry
4 out the purposes of this part.

5 (b) The ombudsman shall have the same immunities from
6 civil and criminal liability as a judge of the State. The
7 ombudsman and the staff of the ombudsman's office shall not
8 testify in any court concerning matters coming to their
9 attention in the exercise of their official duties except as may
10 be necessary to enforce this chapter.

11 **§514B-D Request for dispute intervention and resolution.**

12 (a) Except as otherwise provided in this section, a unit owner
13 or association, by its board members, who is a party to a
14 dispute involving the interpretation or enforcement of an
15 association's governing documents, including the condominium's
16 declaration, bylaws, and house rules, this chapter, or any other
17 law the association is obligated to follow, may submit to the
18 ombudsman's office a written request for dispute intervention
19 and resolution setting forth the facts forming the basis of the
20 dispute.



(b) Simultaneous with the submission of a dispute intervention and resolution request, the requesting party or parties shall provide the board, association management or managing agent, and the other party or parties in the dispute, a copy of the request for dispute intervention and resolution.

The notice shall be sent to the addressee by certified mail, return receipt requested, or by hand delivery with confirmation of delivery. The notice shall specify in reasonable detail:

(1) The nature of the dispute;

(2) Any violations of this chapter, the association governing documents, or any other law or regulation the association is obligated to follow;

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

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

(c) A dispute intervention request submitted to the ombudsman's office pursuant to this section shall be on a form prescribed by the ombudsman's office and accompanied by evidence that:

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



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

2 (d) The ombudsman may impose a minimum fine of \$250
3 against any person who knowingly submits a false or fraudulent
4 dispute intervention and resolution request with the ombudsman's
5 office.

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

12 **§514B-E Enforcement by complaints and enforcement**
13 **officers; dispute resolution assistance.** (a) Upon receipt of a
14 dispute intervention and resolution request pursuant to section
15 514B-D, the complaints and enforcement officer shall open an
16 investigation into the dispute.

17 (b) The complaints and enforcement officer may interview
18 parties and witnesses involved in the dispute and request the
19 production of documents, records, and information pursuant to
20 section 514B-154.5, or other evidence or documents that would be
21 reasonably helpful in resolving the dispute. Participation by



1 the disputing parties, including unit owners, boards, board
2 members, and association management shall be mandatory. Any
3 party to the dispute who refuses to participate shall be subject
4 to penalties and fines to be predetermined and published by the
5 ombudsman. If the board determines not to participate, each
6 board member voting not to participate shall be considered in
7 violation of this Act, shall be personally assessed a monetary
8 fine, and shall be removed from the board.

9 (c) The complaints and enforcement officer shall make
10 recommendations, give guidance, or issue an advisory opinion or
11 decision to the disputing parties as the complaints and
12 enforcement officer deems necessary.

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

18 (e) The complaints and enforcement officer may impose a
19 fine in the amount of not less than \$250 against any person who
20 knowingly submits false or fraudulent information to the
21 ombudsman's office, willingly hinders the lawful actions of the



1 ombudsman or the staff of the ombudsman's office, or willingly
2 refuses to comply with the lawful demands of the ombudsman or
3 the staff of the ombudsman's office.

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

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

14 **§514B-F Contested case hearing.** (a) A contested case
15 hearing shall be conducted by the ombudsman pursuant to
16 chapter 91 and any rules adopted by the ombudsman's office;
17 provided that if there is no dispute as to the facts involved in
18 a particular matter, the ombudsman may permit the parties to
19 proceed by memoranda of law in lieu of a hearing, unless the
20 procedure would unduly burden any party or would otherwise not
21 serve the ends of justice.



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

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

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

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

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



1 **§514B-G Fines; fees.** Any fine or fee collected pursuant
2 to this part shall be deposited into the condominium education
3 trust fund."

4 SECTION 3. Section 28-8.3, Hawaii Revised Statutes, is
5 amended by amending subsection (a) to read as follows:

6 "(a) No department of the State other than the attorney
7 general may employ or retain any attorney, by contract or
8 otherwise, for the purpose of representing the State or the
9 department in any litigation, rendering legal counsel to the
10 department, or drafting legal documents for the department;
11 provided that the foregoing provision shall not apply to the
12 employment or retention of attorneys:

13 (1) By the public utilities commission, the labor and
14 industrial relations appeals board, and the Hawaii
15 labor relations board;

16 (2) By any court or judicial or legislative office of the
17 State; provided that if the attorney general is
18 requested to provide representation to a court or
19 judicial office by the chief justice or the chief
20 justice's designee, or to a legislative office by the
21 speaker of the house of representatives and the



1 president of the senate jointly, and the attorney
2 general declines to provide such representation on the
3 grounds of conflict of interest, the attorney general
4 shall retain an attorney for the court, judicial, or
5 legislative office, subject to approval by the court,
6 judicial, or legislative office;

7 (3) By the legislative reference bureau;

8 (4) By any compilation commission that may be constituted
9 from time to time;

10 (5) By the real estate commission for any action involving
11 the real estate recovery fund;

12 (6) By the contractors license board for any action
13 involving the contractors recovery fund;

14 (7) By the office of Hawaiian affairs;

15 (8) By the department of commerce and consumer affairs for
16 the enforcement of violations of chapters 480 and
17 485A;

18 (9) As grand jury counsel;

19 (10) By the Hawaii health systems corporation, or its
20 regional system boards, or any of their facilities;

21 (11) By the auditor;



- 1 (12) By the office of ombudsman;
- 2 (13) By the insurance division;
- 3 (14) By the University of Hawaii;
- 4 (15) By the Kahoolawe island reserve commission;
- 5 (16) By the division of consumer advocacy;
- 6 (17) By the office of elections;
- 7 (18) By the campaign spending commission;
- 8 (19) By the Hawaii tourism authority, as provided in
- 9 section 201B-2.5;
- 10 (20) By the division of financial institutions;
- 11 (21) By the office of information practices;
- 12 (22) By the school facilities authority;
- 13 (23) By the Mauna Kea stewardship and oversight authority;
- 14 [~~or~~]
- 15 (24) By a department, if the attorney general, for reasons
- 16 deemed by the attorney general to be good and
- 17 sufficient, declines to employ or retain an attorney
- 18 for a department; provided that the governor waives
- 19 the provision of this section~~[-]~~; or
- 20 (25) By the ombudsman's office for condominium
- 21 associations."



SECTION 4. Section 514B-3, Hawaii Revised Statutes, is amended by adding four new definitions to be appropriately inserted and to read as follows:

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

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

"Ombudsman" means the ombudsman for condominium associations under §514B-A.

"Ombudsman's office" means the ombudsman's office for condominium associations established under section 514B-A."

SECTION 5. Section 514B-65, Hawaii Revised Statutes, is amended to read as follows:

"§514B-65 Investigative powers. If the commission or ombudsman's office has reason to believe that any person is violating or has violated this part, part V, part , section 514B-103, 514B-132, 514B-134, 514B-149, sections 514B-152 to 514B-154, section 514B-154.5, ~~[or]~~ the rules of the commission ~~[adopted pursuant thereto]~~, or the rules of the ombudsman's office, the commission or ombudsman's office may conduct an investigation of the matter and examine the books, accounts,



1 contracts, records, and files of all relevant parties. For
2 purposes of this examination, the developer and the real estate
3 broker shall keep and maintain records of all sales transactions
4 and of the funds received by the developer and the real estate
5 broker in accordance with chapter 467 and the rules of the
6 commission, and shall make the records accessible to the
7 commission upon reasonable notice and demand."

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

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



1 SECTION 7. Section 514B-71, Hawaii Revised Statutes, is
2 amended by amending subsection (a) to read as follows:

3 "(a) The commission shall establish a condominium
4 education trust fund that the commission shall use for
5 educational purposes. Educational purposes shall include
6 financing or promoting:

7 (1) Education and research in the field of condominium
8 management, condominium project registration, and real
9 estate, for the benefit of the public and those
10 required to be registered under this chapter;

11 (2) The improvement and more efficient administration of
12 associations;

13 (3) Expeditious and inexpensive procedures for resolving
14 association disputes;

15 (4) The ombudsman's office;

16 (5) Support for mediation of condominium related disputes;
17 and

18 ~~[(5)]~~ (6) Support for voluntary binding arbitration between
19 parties in condominium related disputes, pursuant to
20 section 514B-162.5."



1 SECTION 8. Section 514B-72, Hawaii Revised Statutes, is
2 amended by amending subsection (a) to read as follows:

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

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

11 (2) Beginning with the July 1, ~~[2015,]~~ 2025, biennium
12 registration, an additional annual condominium
13 education trust fund fee in an amount equal to the
14 product of ~~[\$1.50]~~ \$12.50 times the number of
15 condominium units included in the registered project
16 or association to be dedicated to supporting the
17 ombudsman's office, mediation ~~[or]~~, and voluntary
18 binding arbitration of condominium related disputes.
19 The additional condominium education trust fund fee
20 shall total ~~[\$3]~~ \$25 per unit until the commission
21 adopts rules pursuant to chapter 91. On June 30 of



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

8 SECTION 9. Section 514B-73, Hawaii Revised Statutes, is
9 amended to read as follows:

10 **"§514B-73 Condominium education trust fund; management.**

11 (a) The sums received by the commission for deposit in the
12 condominium education trust fund pursuant to section 514B-72
13 shall be held by the commission in trust for carrying out the
14 purpose of the fund.

15 (b) The commission and the director of commerce and
16 consumer affairs may use moneys in the condominium education
17 trust fund collected pursuant to section 514B-72, and the rules
18 of the commission to employ necessary personnel not subject to
19 chapter 76 for additional staff support, to provide office
20 space, and to purchase equipment, furniture, and supplies



1 required by the commission to carry out its responsibilities
2 under this part.

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

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

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

19 (2) A copy of the budget for the current fiscal year,
20 including summary information on programs that were
21 funded or are to be funded and the target audience for



1 each program. The budget shall include a line item
2 reflecting the total amount collected from condominium
3 associations.

4 (e) The ombudsman's office shall submit an annual report
5 to the legislature no later than twenty days prior to the
6 convening of each regular session on the activities of the
7 ombudsman's office during the prior fiscal year, including:

8 (1) The number and types of requests for dispute
9 intervention submitted to the ombudsman's office and
10 their disposition; and

11 (2) Any recommendations for legislation or policies that
12 the ombudsman's office deems would help to resolve
13 condominium disputes more quickly or efficiently."

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

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

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



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



1 (A) Designation of additional areas to be common
2 elements or subject to common expenses after the
3 initial filing of the declaration or bylaws shall
4 require the approval of at least sixty-seven per
5 cent of the unit owners;

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

12 (C) The requirements of this paragraph shall not
13 apply to the purchase of a unit for a resident
14 manager[, ~~which may be purchased with the~~
15 ~~approval of the board,~~] that is made in
16 accordance with the bylaws;

17 (9) Subject to section 514B-38, grant easements, leases,
18 licenses, and concessions through or over the common
19 elements and permit encroachments on the common
20 elements;



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

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



1 ombudsman's office under sections 514B-D, 514B-E, and
2 514B-F;

3 (12) Impose reasonable charges for the preparation and
4 recording of amendments to the declaration,
5 documents requested for resale of units, or statements
6 of unpaid assessments;

7 (13) Provide for cumulative voting through a provision in
8 the bylaws;

9 (14) Provide for the indemnification of its officers,
10 board, committee members, and agents, and maintain
11 directors' and officers' liability insurance;

12 (15) Assign its right to future income, including the right
13 to receive common expense assessments, but only to the
14 extent section 514B-105(e) expressly so provides;

15 (16) Exercise any other powers conferred by the declaration
16 or bylaws;

17 (17) Exercise all other powers that may be exercised in
18 this State by legal entities of the same type as the
19 association, except to the extent inconsistent with
20 this chapter;



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

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

11 SECTION 11. Section 514B-105, Hawaii Revised Statutes, is
12 amended to read as follows:

13 **"§514B-105 Association; limitations on powers.** (a) The
14 declaration and bylaws shall not impose limitations on the power
15 of the association to deal with the developer that are more
16 restrictive than the limitations imposed on the power of the
17 association to deal with other persons.

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



- 1 (1) Prevent any use of a unit that violates the
2 declaration or bylaws;
- 3 (2) Regulate any behavior in or occupancy of a unit that
4 violates the declaration or bylaws or unreasonably
5 interferes with the use and enjoyment of other units
6 or the common elements by other unit owners; or
- 7 (3) Restrict the leasing of residential units to the
8 extent those rules are reasonably designed to meet
9 underwriting requirements of institutional lenders who
10 regularly lend money secured by first mortgages on
11 units in condominiums or regularly purchase those
12 mortgages.
- 13 Otherwise, the association shall not regulate any use of or
14 behavior in units by means of the rules and regulations.
- 15 (c) Any payments made by or on behalf of a unit owner
16 shall first be applied to outstanding common expenses that are
17 assessed to all unit owners in proportion to the common interest
18 appurtenant to their respective units, including commercial
19 property assessed financing assessment expenses incurred for
20 improvements financed pursuant to section 196-64.5. Only after
21 the outstanding common expenses have been paid in full may the



1 payments be applied to other charges owed to the association,
2 including assessed charges to the unit such as ground lease
3 rent, utility sub-metering, storage lockers, parking stalls,
4 boat slips, insurance deductibles, and cable. After these
5 charges are paid, other charges, including unpaid late fees,
6 legal fees, fines, and interest, may be assessed in accordance
7 with an application of payment policy adopted by the board;
8 provided that if a unit owner has designated that any payment is
9 for a specific charge that is not a common expense as described
10 in this subsection, the payment may be applied in accordance
11 with the unit owner's designation even if common expenses remain
12 outstanding.

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



1 information on delinquent assessments or in connection with
2 proceedings to enforce the law or the association's governing
3 documents.

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

9 (e) Subject to any approval requirements and spending
10 limits contained in the declaration or bylaws, the association
11 may authorize the board to borrow money for the repair,
12 replacement, maintenance, operation, or administration of the
13 common elements and personal property of the project, or the
14 making of any additions, alterations, and improvements thereto;
15 provided that the board shall make available any reports
16 provided by licensed or certified professionals that document
17 the necessity and urgency of that expenditure, provide to all
18 unit owners a written notice of the purpose and use of the funds
19 [is first sent to all unit owners and owners], and hold a
20 special meeting to discuss the expenditure and review the
21 reports. Owners representing more than fifty per cent of the



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

17 (f) For financing assessments imposed upon the project
18 under a commercial property assessed financing program pursuant
19 to section 196-64.5 and due from the association, the cost of
20 the commercial property assessed financing, including all
21 principal, interest, commitment fees, servicing fees, and other



1 expenses payable with respect to this borrowing or the
2 enforcement of the obligations under the borrowing, shall be a
3 common expense of the project and the unit owners' proportionate
4 share of the financing assessment shall be collected in the same
5 manner as common expenses. The written consent of at least
6 fifty per cent of all unit owners to finance qualifying
7 improvements with commercial property assessed financing shall
8 include an acknowledgment that the annual financing assessment
9 required to fund debt service on the commercial property
10 assessed financing shall be included as part of the
11 association's adopted revised budget.

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



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

4 SECTION 12. Section 514B-106, Hawaii Revised Statutes, is
5 amended by amending subsection (a) to read as follows:

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



1 SECTION 13. Section 514B-146, Hawaii Revised Statutes, is
2 amended as follows:

3 1. By amending subsection (d) to read as follows:

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

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

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

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



1 (4) If the unit owner contests any penalty or fine, late
2 fee, lien filing fee, or other charges included in the
3 assessment, except common expense assessments, the
4 unit owner may request dispute intervention and
5 resolution through the ombudsman's office or demand
6 mediation as provided in subsection (g) prior to
7 paying those charges.

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

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



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

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



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

19 SECTION 14. Section 514B-146.5, Hawaii Revised Statutes,
20 is amended by amending subsection (a) to read as follows:



1 "(a) Any notice of default and intention to foreclose
2 given by an association under section 667-92(a) shall, in
3 addition to the requirements of that section, also include a
4 statement that the unit owner may request dispute intervention
5 and resolution through the ombudsman's office or mediation by
6 delivering a written request for dispute intervention and
7 resolution through the ombudsman's office or mediation to the
8 association by certified mail, return receipt requested, or hand
9 delivery within thirty days after service of a notice of default
10 and intention to foreclose on the unit owner.

11 If the association does not receive a request for dispute
12 intervention and resolution through the ombudsman's office or
13 mediation within the thirty-day period, the association may
14 proceed with nonjudicial or power of sale foreclosure, subject
15 to all applicable provisions of this chapter and chapter 667.
16 If the association receives a request for dispute intervention
17 and resolution through the ombudsman's office or mediation, as
18 set forth in this subsection, from a unit owner within thirty
19 days after service of a notice of default and intention to
20 foreclose upon the unit owner, the association shall agree to
21 participate in dispute intervention and resolution through the



1 ombudsman's office or mediate and shall be prohibited from
2 proceeding with nonjudicial or power of sale foreclosure until
3 the association has participated in the dispute intervention and
4 resolution through the ombudsman's office or mediation ~~[or the~~
5 ~~time period for completion of the mediation has elapsed. The~~
6 ~~mediation shall be completed within sixty days of the date upon~~
7 ~~which the unit owner delivers a request for mediation upon the~~
8 ~~association; provided that if the mediation is not commenced or~~
9 ~~completed within sixty days or]~~. If the parties are unable to
10 resolve the dispute by dispute intervention and resolution
11 through the ombudsman's office or mediation, the association may
12 proceed with nonjudicial or power of sale foreclosure, subject
13 to all applicable provisions of this chapter and chapter 667."

14 SECTION 15. Section 514B-154, Hawaii Revised Statutes, is
15 amended as follows:

16 1. By amending subsections (b) and (c) to read as follows:
17 "(b) Financial statements, general ledgers, the accounts
18 receivable ledger, accounts payable ledgers, check ledgers,
19 insurance policies, contracts, and invoices of the association
20 for the duration those records are kept by the association and
21 delinquencies of ninety days or more shall be available for



1 examination by unit owners at convenient hours at a place
2 designated by the board; provided that:

3 (1) The board may require owners to furnish to the
4 association a duly executed and acknowledged affidavit
5 stating that the information is requested in good
6 faith for the protection of the interests of the
7 association, its members, or both; and

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

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

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

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

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



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

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

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

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

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



1 exceed \$1 per page. Charges for electronic copies of documents
2 shall be limited to reasonable and actual administrative costs
3 and shall first be applied to the twenty free hours allocated to
4 the association. The maximum charge for any requested
5 electronic document shall be \$5."

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

8 **"§514B-154.5 Association documents to be provided. (a)**

9 Notwithstanding any other provision in the declaration, bylaws,
10 or house rules, if any, the following documents, records, and
11 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 made available to any unit owner and the
14 owner's authorized agents by the managing agent, resident
15 manager, board through a board member, or the association's
16 representative:

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

20 (2) An accurate copy of the declaration, bylaws, house
21 rules, if any, master lease, if any, a sample original



1 conveyance document, and all public reports and any
2 amendments thereto;

3 (3) Detailed, accurate records in chronological order of
4 the receipts and expenditures affecting the common
5 elements, specifying and itemizing the maintenance and
6 repair expenses of the common elements and any other
7 expenses incurred and monthly statements indicating
8 the total current delinquent dollar amount of any
9 unpaid assessments for common expenses;

10 (4) All records and the vouchers authorizing the payments
11 and statements kept and maintained at the address of
12 the project, or elsewhere within the State as
13 determined by the board, subject to section 514B-152;

14 (5) All signed and executed agreements for managing the
15 operation of the property, expressing the agreement of
16 all parties, including but not limited to financial
17 and accounting obligations, services provided, and any
18 compensation arrangements, including any subsequent
19 amendments;

20 (6) An accurate and current list of members of the
21 condominium association and the members' current



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

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

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

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

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

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



1 imposition of special assessments, charges, fines,
2 legal fees, and all other decisions and information to
3 which association members are privileged, pursuant to
4 section 514B-126, which shall be:

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

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

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

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



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

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

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

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



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



1 resident manager, or site manager; provided that
2 personal information may be redacted from the contract
3 copy, including but not limited to the manager's date
4 of birth, age, signature, social security number,
5 residence address, telephone number, non-business
6 electronic mail address, driver's license number,
7 Hawaii identification card number, bank account
8 number, credit or debit card number, access code or
9 password that would permit access to the manager's
10 financial accounts, or any other information that may
11 be withheld under state or federal law.

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

18 (c) Notwithstanding any provision in the declaration,
19 bylaws, or house rules providing for another period of time, all
20 documents, records, and information listed under subsection (a),
21 whether maintained, kept, or required to be provided pursuant to



1 this section or section 514B-152, 514B-153, or 514B-154, shall
2 be provided no later than thirty days after receipt of a unit
3 owner's or owner's authorized agent's written request, unless a
4 lesser time is provided pursuant to this section or section
5 514B-152, 514B-153, or 514B-154, and except as provided in
6 subsection (a)(14).

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

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

19 (f) Any fee charged to a unit owner or owner's authorized
20 agent to obtain copies of the association's documents, records,
21 and information, whether maintained, kept, or required to be



1 provided pursuant to this section or section 514B-152, 514B-153,
2 or 514B-154, shall be reasonable; provided that a reasonable fee
3 shall include actual administrative and duplicating costs and
4 shall not exceed \$1 per printed page, or portion thereof, except
5 that the fee for pages exceeding eight and one-half inches by
6 fourteen inches may exceed \$1 per printed page. Charges for
7 electronic copies of documents shall be limited to reasonable
8 and actual administrative costs and shall first be applied to
9 the twenty free hours allocated to the association. The maximum
10 charge for any requested electronic document shall be \$5.

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



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

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

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

8 **"§514B-157 Attorneys' fees, delinquent assessments, and**

9 **expenses of enforcement.** (a) Fees for attorneys' services
10 incurred by a board shall not be reimbursed by individual unit
11 owners when the services are for the purposes of:

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

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



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

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

7 (1) Collecting any delinquent assessments, including
8 commercial property assessed financing assessments
9 imposed pursuant to section 196-64.5, against any
10 owner's unit;

11 (2) Foreclosing any lien thereon; or

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

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



1 shall be promptly paid on demand to the person or persons by the
2 association[-]; provided further that if a unit owner requests
3 dispute intervention and resolution that initiates an
4 investigation by the ombudsman's office, costs and expenses for
5 the investigation shall be suspended until the complaints and
6 enforcement officer completes the investigation and issues a
7 decision on the matter.

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

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

18 (2) The owner demonstrates to the satisfaction of the
19 court that a demand for enforcement made to the board
20 would have been fruitless.



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

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

14 "[~~§~~514B-163~~§~~] **Trial de novo and appeal.** (a) The
15 submission of any dispute to the ombudsman's office or an
16 arbitration under section 514B-162 shall in no way limit or
17 abridge the right of any party to a trial de novo.

18 (b) Written demand for a trial de novo by any party
19 desiring a trial de novo shall be made upon the other parties
20 within ~~[ten]~~ sixty days after service of the final decision by
21 the ombudsman or the ombudsman's office or arbitration award



1 upon all parties and the trial de novo shall be filed in circuit
2 court within [~~thirty~~] ninety days of the written demand.
3 Failure to meet these deadlines shall preclude a party from
4 demanding a trial de novo.

5 (c) The award of arbitration shall not be made known to
6 the trier of fact at a trial de novo.

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

17 SECTION 19. Section 514B-191, Hawaii Revised Statutes, is
18 amended by amending subsection (a) to read as follows:

19 "(a) An association, board, managing agent, resident
20 manager, unit owner, or any person acting on behalf of an
21 association or a unit owner shall not retaliate against a unit



1 owner, board member, managing agent, resident manager, or
2 association employee who, through a lawful action done in an
3 effort to address, prevent, or stop a violation of this chapter
4 or governing documents of the association:

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

6 (2) Causes a complaint or report of an alleged violation
7 to be filed with the association, the commission, the
8 ombudsman's office, or other appropriate entity;

9 (3) Participates in or cooperates with an investigation of
10 a complaint or report filed with the association, the
11 commission, the ombudsman's office, or other
12 appropriate entity;

13 (4) Otherwise acts in furtherance of a complaint, report,
14 or investigation concerning an alleged violation; or

15 (5) Exercises or attempts to exercise any right under this
16 chapter or the governing documents of the
17 association."

18 SECTION 20. There is appropriated out of the general
19 revenues of the State of Hawaii the sum of \$ or so much
20 thereof as may be necessary for fiscal year 2025-2026 and the
21 same sum or so much thereof as may be necessary for fiscal year



1 2026-2027 for the ombudsman's office for condominium
2 associations.

3 The sums appropriated shall be expended by the department
4 of commerce and consumer affairs for the purposes of this Act.

5 SECTION 21. There is appropriated out of the condominium
6 education trust fund the sum of \$ or so much thereof as
7 may be necessary for fiscal year 2025-2026 and the same sum or
8 so much thereof as may be necessary for fiscal year 2026-2027
9 for the administrative costs associated with the establishment
10 of the ombudsman's office for condominium associations within
11 the department of commerce and consumer affairs, including the
12 hiring of necessary staff.

13 The sums appropriated shall be expended by the department
14 of commerce and consumer affairs for the purposes of this Act.

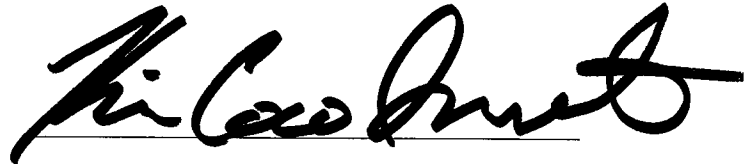
15 SECTION 22. In codifying the new sections added by section
16 2 of this Act, the revisor of statutes shall substitute
17 appropriate section numbers for the letters used in designating
18 the new sections in this Act.

19 SECTION 23. Statutory material to be repealed is bracketed
20 and stricken. New statutory material is underscored.



1 SECTION 24. This Act shall take effect on January 1, 2026;
2 provided that sections 20 and 21 shall take effect on July 1,
3 2025.
4

INTRODUCED BY:

A handwritten signature in black ink, appearing to read "Phil Capobianco", written over a horizontal line.

JAN 21 2025



H.B. NO. 890

Report Title:

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

Description:

Establishes the Ombudsman's Office for Condominium Associations within the Department of Commerce and Consumer Affairs. Updates the Condominium Property Act to integrate the role and functions of the ombudsman's office for condominium associations. Appropriates funds for establishment of the Ombudsman's Office for Condominium Associations.

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

