
A BILL FOR AN ACT

RELATING TO CONDOMINIUMS.

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

PART I

SECTION 1. The purpose of this Act is to promote the use of alternative dispute resolution methods for condominium-related disputes. The legislature finds that the amendments to part VI of chapter 514B, Hawaii Revised Statutes, pursuant to this Act will promote the use of alternative dispute resolution methods for condominium-related disputes. Corresponding changes to other parts of chapter 514B, Hawaii Revised Statutes, will serve the same purpose.

PART II

SECTION 2. Chapter 514B, Hawaii Revised Statutes, is amended by adding two new sections to subpart C of part VI to be appropriately designated and to read as follows:

"§514B-A Attorneys' fees and costs. (a) In any action or proceeding concerning the:

(1) Collection of any delinquent assessments;

(2) Foreclosure of any lien on a unit owner's unit; or



1 (3) Interpretation or enforcement of the declaration,
2 bylaws, house rules, this chapter, or rules of the
3 commission,
4 the prevailing party shall be awarded all reasonable attorneys'
5 fees and costs.

6 (b) All costs and expenses, including reasonable
7 attorneys' fees, incurred by or on behalf of an association in
8 connection with collecting delinquent assessments, foreclosing
9 any lien on a unit owner's unit, or the interpretation or
10 enforcement of the declaration, bylaws, house rules, this
11 chapter, or the rules of the commission, shall be promptly paid
12 on demand to the association by the unit owner or tenant
13 assessed for such costs and expenses; provided that these
14 amounts may be disputed in accordance with section 514B-146 if
15 those amounts have not been awarded pursuant to the judgment of
16 a court or the award of an arbitrator.

17 **§514B-B Fines; when collectable.** (a) An association may
18 impose fines for the violation of the declaration, bylaws, and
19 house rules adopted pursuant to this chapter, subject to the
20 following requirements:

21 (1) The amount of the fine shall be reasonable;



1 (2) Notice of imposition of the fine shall include:

2 (A) A general description of the act or omission for
3 which the fine is imposed;

4 (B) Reference to one or more provisions of the
5 declaration, bylaws, or house rules, violated by
6 the act or omission; and

7 (C) Notice of an appeal procedure that may be
8 initiated within thirty days after imposition of
9 the fine and that provides an aggrieved person
10 with a reasonable opportunity to challenge the
11 fine and be heard by the board regarding the
12 challenge;

13 (3) Subject to its jurisdictional limits, the small claims
14 division of the district court in the circuit where
15 the condominium is located may finally determine the
16 validity and the amount of a fine if the person first
17 timely appeals imposition of a fine to the board and
18 initiates an action within thirty days after receipt
19 of notice of disposition of the appeal; and

20 (4) A fine shall be deemed to be collectable once the:



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1 (A) Time to initiate an appeal has expired and an
2 appeal has not been initiated;

3 (B) Fine has been upheld following a timely appeal
4 and a small claims court action has not been
5 timely initiated; or

6 (C) Small claims court has not invalidated the fine
7 within ninety days after timely initiation of a
8 small claims court action.

9 (b) No attorneys' fees with respect to a fine shall be
10 charged by an association to any unit owner or tenant before the
11 time when a fine is deemed to be collectable.

12 (c) The imposition of a fine, and the determination of a
13 small claims court, if any, shall be without prejudice to the
14 exercise of any other remedy available to an association."

15 PART III

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

19 " . Alternative Dispute Resolution

20 **§514B-C Methods of dispute resolution.** The condominium
21 education trust fund may be used to provide support for the



1 following methods of alternative dispute resolution in
2 connection with any condominium-related dispute:

3 (1) Evaluative mediation; and

4 (2) Binding arbitration.

5 **§514B-D Evaluative mediation.** (a) The evaluative
6 mediation of a condominium-related dispute described in
7 subsection (b) shall be mandatory upon the written request of a
8 party to the dispute. Participation in evaluative mediation of
9 a condominium-related dispute may be compelled pursuant to the
10 procedures described in this section.

11 (b) A condominium-related dispute subject to mandatory
12 evaluative mediation shall be any dispute that involves the
13 interpretation or enforcement of the association's declaration,
14 bylaws, or house rules.

15 (c) The evaluative mediation of a condominium-related
16 dispute shall not be mandatory if the dispute involves:

17 (1) Threatened property damage or threats to the health or
18 safety of unit owners or any other person;

19 (2) Assessments, except as provided in section 514B-146;

20 (3) Personal injury claims;



1 (4) Matters that would affect the availability of any
2 coverage pursuant to an insurance policy obtained by
3 or on behalf of an association;

4 (5) The same or substantially similar issues that have
5 already been mediated; or

6 (6) Issues that are subject to an action or a binding
7 alternative dispute resolution mechanism that has
8 already been commenced.

9 (d) A unit owner or an association may apply to the
10 circuit court in the judicial circuit where the condominium is
11 located for an order compelling evaluative mediation only when:

12 (1) Evaluative mediation of the dispute is mandatory
13 pursuant to subsection (a);

14 (2) A written request for evaluative mediation has been
15 delivered to and received by the other party; and

16 (3) The parties have not agreed to a mediator or an
17 evaluative mediation date within forty-five days after
18 a party receives a written request for evaluative
19 mediation.

20 (e) Any application made to the circuit court pursuant to
21 subsection (d) shall be made and heard in a summary manner and



1 in accordance with procedures for the making and hearing of
2 motions. The prevailing party shall be entitled to an award of
3 all reasonable attorneys' fees and costs.

4 (f) Each party to an evaluative mediation shall bear the
5 attorneys' fees and costs and other expenses of preparing for
6 and participating in evaluative mediation incurred by the party,
7 unless otherwise specified in:

8 (1) A written agreement that is signed by the parties;

9 (2) An order of a court in connection with the final
10 disposition of a claim that was submitted to
11 evaluative mediation;

12 (3) An award of an arbitrator in connection with the final
13 disposition of a claim that was submitted to
14 evaluative mediation; or

15 (4) An order of the circuit court in connection with
16 compelled evaluative mediation in accordance with
17 subsection (d).

18 (g) Any individual evaluative mediation supported with
19 funds from the condominium education trust fund pursuant to
20 section 514B-71:



1 (1) Shall include a fee of \$150 to be paid by each party
2 to the mediator; provided that moneys from the trust
3 fund may be used to pay the fee for each unit owner
4 who demonstrates to the satisfaction of the commission
5 that the fee will pose an unreasonable economic
6 burden;

7 (2) Shall receive no more from the trust fund than is
8 appropriate under the circumstances, and in no event
9 more than a total of \$3,500; and

10 (3) May include disputes and parties in addition to those
11 identified in subsection (a); provided that a unit
12 owner or a developer and board are parties to the
13 evaluative mediation at all times and the unit owner
14 or developer and board mutually consent in writing to
15 the addition of the disputes and parties.

16 (h) A court or an arbitrator with jurisdiction may
17 consider a timely request to stay any action or proceeding
18 concerning a dispute that would be subject to evaluative
19 mediation pursuant to subsection (a) in the absence of the
20 action or proceeding, and refer the matter to evaluative
21 mediation; provided that:



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

4 (2) No stay shall exceed a period of ninety days.

5 **§514B-E Binding arbitration.** (a) Support from the
6 condominium education trust fund, for binding arbitration of a
7 condominium-related dispute, shall be authorized when:

8 (1) The dispute has first been submitted to an evaluative
9 mediation pursuant to section 514B-D; and

10 (2) All parties to the dispute agree in writing to be
11 bound, in accordance with and subject to chapter 658A.

12 (b) Support from the condominium education trust fund for
13 any individual arbitration shall not exceed what is appropriate
14 under the circumstances, and in no event shall exceed a total of
15 \$6,000.

16 **§514B-F Qualifications of mediators and arbitrators.** The
17 commission may determine the qualifications of any individual
18 who serves as a mediator or an arbitrator in a matter involving
19 payment from the condominium education trust fund; provided
20 that:



(1) A mediator shall have three years of mediation experience; and

(2) An arbitrator shall have five years of experience as a licensed attorney and at least two years of full-time experience working with condominiums in a professional capacity.

Alternatively, the individual may demonstrate other exceptional knowledge and experience, such as by serving as a judge for a similar number of years.

§514B-G Disclosures by mediators and arbitrators. (a)

Before accepting appointment, an individual who is requested to serve as a mediator shall disclose to all parties involved in the condominium-related dispute any known facts that a reasonable person would consider likely to affect the impartiality of the mediator in the mediation, including but not limited to:

(1) A direct and material financial or personal interest in the outcome of the dispute; and

(2) An existing or past substantial relationship with any of the parties to the dispute, their counsel or representatives, or a witness.



1 (b) The disclosure obligation of the mediator shall
2 continue after appointment and shall apply to any facts learned
3 after accepting appointment that a reasonable person would
4 consider likely to affect the impartiality of the mediator.

5 (c) An agreement made in mediation shall be voidable if
6 the mediator failed to make a disclosure required by
7 subsection (a).

8 (d) Disclosures by arbitrators shall be governed pursuant
9 to chapter 658A."

10 PART IV

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

13 "**§421I-9 Mediation and arbitration of disputes.** At the
14 request of any party, any dispute concerning or involving one or
15 more shareholders and a corporation, its board of directors,
16 managing agent, resident manager, or one or more other
17 shareholders relating to the interpretation, application, or
18 enforcement of this chapter or the corporation's articles of
19 incorporation, bylaws, or rules adopted in accordance with its
20 bylaws shall be submitted first to mediation. When all
21 reasonable efforts for mediation have been made and the dispute



1 is not settled either in conference between the parties or
2 through mediation, the dispute shall be submitted to
3 ~~[arbitration]~~ alternative dispute resolution in the same manner
4 and subject to the same requirements, to the extent practicable,
5 which now apply to condominiums under ~~[section 514B-162.]~~
6 subpart _____ of part VI of chapter 514B."

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

10 "Condominium-related dispute" means a dispute between:

11 (1) A unit owner and the board;

12 (2) A unit owner and the managing agent;

13 (3) Board members and the board; or

14 (4) An association and the managing agent.

15 "Evaluative mediation" includes an assessment, either
16 orally or by a written statement, of the strengths and
17 weaknesses of each party's case and offers opinions or
18 recommendations about possible outcomes, including an estimate
19 of the damages for which each party may be liable; provided that
20 the assessment shall only be available to the parties if the
21 parties fail to settle during the evaluative mediation."



SECTION 6. Section 514B-71, Hawaii Revised Statutes, is amended by amending subsection (a) to read as follows:

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

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

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

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

(4) Support for ~~[mediation of condominium-related disputes; and~~

~~(5) Support for voluntary binding arbitration between parties in condominium-related disputes, pursuant to section 514B-162.5.]~~ alternative dispute resolution, as described in subpart _____ of part VI."



1 SECTION 7. 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, biennium
12 registration, an additional annual condominium
13 education trust fund fee in an amount equal to the
14 product of \$1.50 times the number of condominium units
15 included in the registered project or association to
16 be dedicated to supporting ~~[mediation or voluntary~~
17 ~~binding arbitration of condominium related disputes.]~~
18 alternative dispute resolution, as described in
19 subpart of part VI. The additional condominium
20 education trust fund fee shall total \$3 per unit until
21 the commission adopts rules pursuant to chapter 91.



1 On June 30 of every odd-numbered year, any unexpended
2 additional amounts paid into the condominium education
3 trust fund and initially dedicated to supporting
4 ~~[mediation or voluntary binding arbitration]~~
5 alternative dispute resolution of ~~[condominium~~
6 ~~related]~~ condominium-related disputes, as required by
7 this paragraph, shall be used for educational purposes
8 as provided in section 514B-71(a)(1), (2), and (3)."

9 SECTION 8. Section 514B-104, Hawaii Revised Statutes, is
10 amended by amending subsection (a) to read as follows:

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

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

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

20 (3) Hire and discharge managing agents and other
21 independent contractors, agents, and employees;



1 (4) Institute, defend, or intervene in litigation or
2 administrative proceedings in its own name on behalf
3 of itself or two or more unit owners on matters
4 affecting the condominium. For the purposes of
5 actions under chapter 480, associations shall be
6 deemed to be "consumers";

7 (5) Make contracts and incur liabilities;

8 (6) Regulate the use, maintenance, repair, replacement,
9 and modification of common elements;

10 (7) Cause additional improvements to be made as a part of
11 the common elements;

12 (8) Acquire, hold, encumber, and convey in its own name
13 any right, title, or interest to real or personal
14 property; provided that:

15 (A) Designation of additional areas to be common
16 elements or subject to common expenses after the
17 initial filing of the declaration or bylaws shall
18 require the approval of at least sixty-seven per
19 cent of the unit owners;

20 (B) If the developer discloses to the initial buyer
21 in writing that additional areas will be



1 designated as common elements whether pursuant to
2 an incremental or phased project or otherwise,
3 the requirements of this paragraph shall not
4 apply as to those additional areas; and

5 (C) The requirements of this paragraph shall not
6 apply to the purchase of a unit for a resident
7 manager, which may be purchased with the approval
8 of the board;

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

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

18 (11) Impose charges and penalties, including late fees and
19 interest, for late payment of assessments and levy
20 reasonable fines for violations of the declaration,
21 bylaws, rules, and regulations of the association,



1 ~~[either] in accordance with [the bylaws or, if the~~
2 ~~bylaws are silent, pursuant to a resolution adopted by~~
3 ~~the board that establishes a fining procedure that~~
4 ~~states the basis for the fine and allows an appeal to~~
5 ~~the board of the fine with notice and an opportunity~~
6 ~~to be heard and providing that if the fine is paid,~~
7 ~~the unit owner shall have the right to initiate a~~
8 ~~dispute resolution process as provided by sections~~
9 ~~514B-161, 514B-162, or by filing a request for an~~
10 ~~administrative hearing under a pilot program~~
11 ~~administered by the department of commerce and~~
12 ~~consumer affairs;]~~ section 514B-B and this section,
13 subject to subpart ;

14 (12) Impose reasonable charges for the preparation and
15 recording of amendments to the declaration,
16 documents requested for resale of units, or statements
17 of unpaid assessments;

18 (13) Provide for cumulative voting through a provision in
19 the bylaws;



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



SECTION 9. Section 514B-105, Hawaii Revised Statutes, is amended by amending subsection (c) to read as follows:

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



SECTION 10. Section 514B-106, Hawaii Revised Statutes, is amended by amending subsection (a) to read as follows:

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

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

"§514B-146 Association fiscal matters; lien for assessments. (a) All sums assessed by the association but



1 unpaid for the share of the common expenses chargeable to any
2 unit shall constitute a lien on the unit with priority over all
3 other liens, except:

4 (1) Liens for real property taxes and assessments lawfully
5 imposed by governmental authority against the unit;
6 and

7 (2) Except as provided in subsection (j), all sums unpaid
8 on any mortgage of record that was recorded before the
9 recordation of a notice of a lien by the association,
10 and costs and expenses including attorneys' fees
11 provided in the mortgages;

12 provided that a lien recorded by an association for unpaid
13 assessments shall expire six years from the date of recordation
14 unless proceedings to enforce the lien are instituted before the
15 expiration of the lien; provided further that the expiration of
16 a recorded lien shall in no way affect the association's
17 automatic lien that arises pursuant to this subsection or the
18 declaration or bylaws. Any proceedings to enforce an
19 association's lien for any assessment shall be instituted within
20 six years after the assessment became due; provided that if the
21 owner of a unit subject to a lien of the association files a



1 petition for relief under the United States Bankruptcy Code
2 (11 U.S.C. §101 et seq.), the period of time for instituting
3 proceedings to enforce the association's lien shall be tolled
4 until thirty days after the automatic stay of proceedings under
5 section 362 of the United States Bankruptcy Code (11 U.S.C.
6 §362) is lifted.

7 The lien of the association may be foreclosed by action or
8 by nonjudicial or power of sale foreclosure, regardless of the
9 presence or absence of power of sale language in an
10 association's governing documents, by the managing agent or
11 board, acting on behalf of the association and in the name of
12 the association; provided that no association may exercise the
13 nonjudicial or power of sale remedies provided in chapter 667 to
14 foreclose a lien against any unit that arises solely from fines,
15 penalties, legal fees, or late fees, and the foreclosure of the
16 lien shall be filed in court pursuant to part IA of chapter 667.

17 In any foreclosure described in this section, the unit
18 owner shall be required to pay a reasonable rent for the unit,
19 if so provided in the bylaws or the law, and the plaintiff in
20 the foreclosure shall be entitled to the appointment of a
21 receiver to collect the rent owed by the unit owner or any



1 tenant of the unit. If the association is the plaintiff, it may
2 request that its managing agent be appointed as receiver to
3 collect the rent from the tenant. The managing agent or board,
4 acting on behalf of the association and in the name of the
5 association, unless prohibited by the declaration, may bid on
6 the unit at foreclosure sale, and acquire and hold, lease,
7 mortgage, and convey the unit. Action to recover a money
8 judgment for unpaid common expenses shall be maintainable
9 without foreclosing or waiving the lien securing the unpaid
10 common expenses owed.

11 (b) Except as provided in subsection (j), when the
12 mortgagee of a mortgage of record or other purchaser of a unit
13 obtains title to the unit as a result of foreclosure of the
14 mortgage, the acquirer of title and the acquirer's successors
15 and assigns shall not be liable for the share of the common
16 expenses or assessments by the association chargeable to the
17 unit that became due [~~prior to~~] before the acquisition of title
18 to the unit by the acquirer. The unpaid share of common
19 expenses or assessments shall be deemed to be common expenses
20 collectible from all of the unit owners, including the acquirer
21 and the acquirer's successors and assigns. The mortgagee of



1 record or other purchaser of the unit shall be deemed to acquire
2 title and shall be required to pay the unit's share of common
3 expenses and assessments beginning:

4 (1) Thirty-six days after the order confirming the sale to
5 the purchaser has been filed with the court;

6 (2) Sixty days after the hearing at which the court grants
7 the motion to confirm the sale to the purchaser;

8 (3) Thirty days after the public sale in a nonjudicial
9 power of sale foreclosure conducted pursuant to
10 chapter 667; or

11 (4) Upon the recording of the instrument of conveyance;
12 whichever occurs first; provided that the mortgagee of record or
13 other purchaser of the unit shall not be deemed to acquire title
14 under paragraph (1), (2), or (3), if transfer of title is
15 delayed past the thirty-six days specified in paragraph (1), the
16 sixty days specified in paragraph (2), or the thirty days
17 specified in paragraph (3), when a person who appears at the
18 hearing on the motion or a party to the foreclosure action
19 requests reconsideration of the motion or order to confirm sale,
20 objects to the form of the proposed order to confirm sale,
21 appeals the decision of the court to grant the motion to confirm



1 sale, or the debtor or mortgagor declares bankruptcy or is
2 involuntarily placed into bankruptcy. In any ~~[such]~~ case, the
3 mortgagee of record or other purchaser of the unit shall be
4 deemed to acquire title upon recordation of the instrument of
5 conveyance.

6 ~~[(c) A unit owner who receives a demand for payment from~~
7 ~~an association and disputes the amount of an assessment may~~
8 ~~request a written statement clearly indicating:~~

9 ~~(1) The amount of common expenses included in the~~
10 ~~assessment, including the due date of each amount~~
11 ~~claimed;~~

12 ~~(2) The amount of any penalty or fine, late fee, lien~~
13 ~~filing fee, and any other charge included in the~~
14 ~~assessment that is not imposed on all unit owners as a~~
15 ~~common expense; and~~

16 ~~(3) The amount of attorneys' fees and costs, if any,~~
17 ~~included in the assessment.~~

18 ~~(d) A unit owner who disputes the information in the~~
19 ~~written statement received from the association pursuant to~~
20 ~~subsection (c) may request a subsequent written statement that~~
21 ~~additionally informs the unit owner that:~~



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

~~(2) A unit owner has a right to demand mediation or arbitration to resolve disputes about the amount or validity of an association's common expense assessment; provided that the unit owner immediately pays the common expense assessment in full and keeps common expense assessments current;~~

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

~~(4) If the unit owner contests any penalty or fine, late fee, lien filing fee, or other charges included in the assessment, except common expense assessments, the unit owner may demand mediation as provided in subsection (g) prior to paying those charges.~~

~~(e) No unit owner shall withhold any common expense assessment claimed by the association. Nothing in this section shall limit the rights of an owner to the protection of all fair debt collection procedures mandated under federal and state law.~~



1 ~~(f) A unit owner who pays an association the full amount~~
2 ~~of the common expenses claimed by the association may file in~~
3 ~~small claims court or require the association to mediate to~~
4 ~~resolve any disputes concerning the amount or validity of the~~
5 ~~association's common expense claim. If the unit owner and the~~
6 ~~association are unable to resolve the dispute through mediation,~~
7 ~~either party may file for arbitration under section 514B-162;~~
8 ~~provided that a unit owner may only file for arbitration if all~~
9 ~~amounts claimed by the association as common expenses are paid~~
10 ~~in full on or before the date of filing. If the unit owner~~
11 ~~fails to keep all association common expense assessments current~~
12 ~~during the arbitration, the association may ask the arbitrator~~
13 ~~to temporarily suspend the arbitration proceedings. If the unit~~
14 ~~owner pays all association common expense assessments within~~
15 ~~thirty days of the date of suspension, the unit owner may ask~~
16 ~~the arbitrator to recommence the arbitration proceedings. If~~
17 ~~the unit owner fails to pay all association common expense~~
18 ~~assessments by the end of the thirty-day period, the association~~
19 ~~may ask the arbitrator to dismiss the arbitration proceedings.~~
20 ~~The unit owner shall be entitled to a refund of any amounts paid~~
21 ~~as 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 on the validity of those~~
5 ~~charges. The unit owner has thirty days from the date of the~~
6 ~~written statement requested pursuant to subsection (d) to file~~
7 ~~demand for mediation on the disputed charges, other than common~~
8 ~~expense assessments. If the unit owner fails to file for~~
9 ~~mediation within thirty days of the date of the written~~
10 ~~statement requested pursuant to subsection (d), the association~~
11 ~~may proceed with collection of the charges. If the unit owner~~
12 ~~makes a request for mediation within thirty days, the~~
13 ~~association shall be prohibited from attempting to collect any~~
14 ~~of the disputed charges until the association has participated~~
15 ~~in the mediation. The mediation shall be completed within sixty~~
16 ~~days of the unit owner's request for mediation; provided that if~~
17 ~~the mediation is not completed within sixty days or the parties~~
18 ~~are unable to resolve the dispute by mediation, the association~~
19 ~~may proceed with collection of all amounts due from the unit~~
20 ~~owner for attorneys' fees and costs, penalties or fines, late~~



~~fees, lien filing fees, or any other charge that is not imposed on all unit owners as a common expense.]~~

(c) A unit owner shall have no right to withhold payment of a common expense assessment for any reason; provided that a unit owner may dispute the obligation to pay a common expense assessment after payment in full of the assessment.

(d) A unit owner may dispute other assessments, apart from a common expense assessment, before making payment. A unit owner who disputes an assessment may request a written statement clearly detailing:

(1) The common expenses included in an assessment and stating the due date of each amount of common expense assessed;

(2) The amount of any charge included in the assessment that is not imposed on all unit owners as a common expense, such as a fine or penalty, or a late fee or filing fee; and

(3) The amount of attorneys' fees and costs, if any, included in the assessment.

In responding to the request, the association shall include a disclaimer that under state law, a unit owner has no right to



1 withhold payment of a common expense assessment for any reason,
2 but that the obligation to pay a common expense assessment may
3 be disputed after the assessment has been paid in full. The
4 association shall also include in the disclaimer that a unit
5 owner may dispute other assessments, apart from a common expense
6 assessment, before making payment, and that the right to contest
7 assessments is described in section 514B-D and this section.

8 (e) Nothing in this section shall limit the rights of a
9 unit owner to the protection of all fair debt collection
10 procedures mandated under federal and state law.

11 (f) A unit owner may file an action in any court with
12 jurisdiction, or may request evaluative mediation, to contest:

13 (1) A paid assessment; or

14 (2) An unpaid assessment other than a common expense
15 assessment or fine. Fines shall be subject to section
16 514B-B.

17 A unit owner who elects to request evaluative mediation
18 shall do so before the initiation of an action concerning the
19 assessment and within thirty days after the date of the
20 statement described in subsection (d). A timely demand for



1 evaluative mediation shall stay an association's effort to
2 collect the contested assessment for sixty days.

3 (g) An association may defend an assessment in court and
4 in evaluative mediation. The association may proceed to collect
5 an unpaid assessment by any legal means except when collection
6 efforts are stayed pursuant to subsection (f).

7 (h) In conjunction with or as an alternative to
8 foreclosure proceedings under subsection (a), where a unit is
9 owner-occupied, the association may authorize its managing agent
10 or board to, after sixty days' written notice to the unit owner
11 and to the unit's first mortgagee of the nonpayment of the
12 unit's share of the common expenses, terminate the delinquent
13 unit's access to the common elements and cease supplying a
14 delinquent unit with any and all services normally supplied or
15 paid for by the association. Any terminated services and
16 privileges shall be restored upon payment of all delinquent
17 assessments but need not be restored until payment in full is
18 received.

19 (i) Before the board or managing agent may take the
20 actions permitted under subsection (h), the board shall adopt a
21 written policy providing for ~~such~~ the actions and have the



1 policy approved by a majority vote of the unit owners at an
2 annual or special meeting of the association or by the written
3 consent of a majority of the unit owners.

4 (j) Subject to this subsection, and subsections (k) and
5 (l), the board may specially assess the amount of the unpaid
6 regular monthly common assessments for common expenses against a
7 mortgagee or other purchaser who, in a judicial or nonjudicial
8 power of sale foreclosure, purchases a delinquent unit; provided
9 that the mortgagee or other purchaser may require the
10 association to provide at no charge a notice of the
11 association's intent to claim lien against the delinquent unit
12 for the amount of the special assessment, [~~prior to~~] before the
13 subsequent purchaser's acquisition of title to the delinquent
14 unit. The notice shall state the amount of the special
15 assessment, how that amount was calculated, and the legal
16 description of the unit.

17 (k) The amount of the special assessment assessed under
18 subsection (j) shall not exceed the total amount of unpaid
19 regular monthly common assessments that were assessed during the
20 six months immediately preceding the completion of the judicial
21 or nonjudicial power of sale foreclosure.



1 (1) For purposes of subsections (j) and (k), the following
2 definitions shall apply, unless the context requires otherwise:

3 "Completion" means:

4 (1) In a nonjudicial power of sale foreclosure, when the
5 affidavit after public sale is recorded pursuant to
6 section 667-33; and

7 (2) In a judicial foreclosure, when a purchaser is deemed
8 to acquire title pursuant to subsection (b).

9 "Regular monthly common assessments" does not include:

10 (1) Any other special assessment, except for a special
11 assessment imposed on all units as part of a budget
12 adopted pursuant to section 514B-148, including
13 commercial property assessed financing assessments
14 imposed pursuant to section 196-64.5;

15 (2) Late charges, fines, or penalties;

16 (3) Interest assessed by the association;

17 (4) Any lien arising out of the assessment; or

18 (5) Any fees or costs related to the collection or
19 enforcement of the assessment, including attorneys'
20 fees and court costs.



1 (m) The cost of a release of any lien filed pursuant to
2 this section shall be paid by the party requesting the release.

3 (n) After any judicial or nonjudicial foreclosure
4 proceeding in which the association acquires title to the unit,
5 any excess rental income received by the association from the
6 unit shall be paid to existing lien holders based on the
7 priority of lien, and not on a pro rata basis, and shall be
8 applied to the benefit of the unit owner. For purposes of this
9 subsection, excess rental income shall be any net income
10 received by the association after a court has issued a final
11 judgment determining the priority of a senior mortgagee and
12 after paying, crediting, or reimbursing the association or a
13 third party for:

14 (1) The lien for delinquent assessments pursuant to
15 subsections (a) and (b);

16 (2) Any maintenance fee delinquency against the unit;

17 (3) Attorney's fees and other collection costs related to
18 the association's foreclosure of the unit; or

19 (4) Any costs incurred by the association for the rental,
20 repair, maintenance, or rehabilitation of the unit
21 while the association is in possession of the unit



1 including monthly association maintenance fees,
2 management fees, real estate commissions, cleaning and
3 repair expenses for the unit, and general excise taxes
4 paid on rental income;

5 provided that the lien for delinquent assessments under
6 paragraph (1) shall be paid, credited, or reimbursed first."

7 SECTION 12. Section 514B-148, Hawaii Revised Statutes, is
8 amended by amending subsection (g) to read as follows:

9 "(g) Subject to the procedures of section [~~514B-157~~]
10 514B-A and any rules adopted by the commission, any unit owner
11 whose association board fails to comply with this section may
12 enforce compliance by the board. In any proceeding to enforce
13 compliance, a board that has not prepared an annual operating
14 budget and reserve study shall have the burden of proving it has
15 complied with this section."

16 SECTION 13. Chapter 514B, part VI, subpart D, Hawaii
17 Revised Statutes, is repealed.

18 SECTION 14. Section 514B-157, Hawaii Revised Statutes, is
19 repealed.

20 ~~["~~[514B-157]~~ Attorneys' fees, delinquent assessments, and~~

21 ~~expenses of enforcement.~~ (a) ~~All costs and expenses, including~~



1 ~~reasonable attorneys' fees, incurred by or on behalf of the~~
2 ~~association for:~~

3 ~~(1) Collecting any delinquent assessments, including~~
4 ~~commercial property assessed financing assessments~~
5 ~~imposed pursuant to section 196-64.5, against any~~
6 ~~owner's unit;~~

7 ~~(2) Foreclosing any lien thereon; or~~

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

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

20 ~~(b) If any claim by an owner is substantiated in any~~
21 ~~action against an association, any of its officers or directors,~~



~~or its board to enforce any provision of the declaration,
bylaws, house rules, or this chapter, then all reasonable and
necessary expenses, costs, and attorneys' fees incurred by an
owner shall be awarded to such owner; provided that no such
award shall be made in any derivative action unless:~~

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

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

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



1 PART V

2 SECTION 15. In codifying the new sections added by
3 sections 2 and 3 of this Act, the revisor of statutes shall
4 substitute appropriate section numbers for the letters used in
5 designating the new sections in this Act.

6 SECTION 16. Statutory material to be repealed is bracketed
7 and stricken. New statutory material is underscored.

8 SECTION 17. This Act shall take effect on July 1, 2050.



Report Title:

Condominiums; Alternative Dispute Resolution; Evaluative
Mediation; Binding Arbitration

Description:

Amends the conditions and procedures of alternative dispute
resolution methods for condominium-related disputes, including
the use of evaluative mediation or binding arbitration.
Effective 7/1/2050. (HD1)

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

