THE SENATE
THIRTY-THIRD LEGISLATURE, 2025
STATE OF HAWAII

S.B. NO. 146 S.D. 1

A BILL FOR AN ACT

RELATING TO CONDOMINIUMS.

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

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 amendment of part VI, 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 I

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 an owner's unit; or

(3) Interpretation or enforcement of the declaration, bylaws, house rules, and this chapter, or the rules of the commission,

the prevailing party shall be awarded all reasonable attorneys' fees and costs.

(b) Attorneys' fees and costs assessed to a unit owner, except pursuant to the judgment of a court or the award of an arbitrator, may be disputed in accordance with section 514B-146.

(c) A party that participates in the early neutral evaluation of a condominium-related dispute, and that expressly accepts the whole of the evaluation in writing, and complies with the terms thereof, shall not be subject to any further claim of attorneys' fees and costs in connection with the dispute.

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

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

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

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

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

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

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

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

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

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

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

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

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

PART II

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

"**SUBPART . ALTERNATIVE DISPUTE RESOLUTION.**

§514B-C Methods of dispute resolution. The condominium education trust fund may be used to provide support for the following methods of alternative dispute resolution in connection with any condominium-related dispute:

(1) Mediation;

(2) Binding arbitration; and

(3) Early neutral evaluation.

§514B-D Mediation. (a) The mediation of a condominium-related dispute described in subsection (b) shall be mandatory upon the written request of a party to the dispute. Participation in mediation of a condominium-related dispute may be compelled pursuant to the procedures described in this section.

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

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

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

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

(3) Personal injury claims;

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

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

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

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

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

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

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

(e) Any application made to the circuit court pursuant to subsection (d) shall be made and heard in a summary manner and in accordance with procedures for the making and hearing of

motions. The prevailing party shall be entitled to an award of all reasonable attorneys' fees and costs.

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

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

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

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

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

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

(1) Shall include a fee of $150 to be paid by each party to the mediator; provided that moneys from the fund may be used to pay the fee for each unit owner who demonstrates to the satisfaction of the commission

that the fee will pose an unreasonable economic burden;

(2) Shall receive no more from the fund than is appropriate under the circumstances, and in no event more than a total of $;

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

(4) May include an evaluation by the mediator of any claims or defenses presented during the mediation; provided that an evaluative form of mediation shall be required whenever requested by a party to a condominium-related dispute.

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

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

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

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

(1) The dispute has first been submitted to an evaluative form of mediation pursuant to section 514B-F; and

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

(b) Support for any individual arbitration shall not exceed what is appropriate under the circumstances, and in no event shall exceed a total of $.

§514B-F Early neutral evaluation. (a) Any party to a condominium-related dispute that is subject to mandatory mediation may request that the dispute be submitted to a process of early neutral evaluation following participation in mediation. Participation in early neutral evaluation of a condominium-related dispute subject to mandatory mediation may be compelled pursuant to this section.

(b) A unit owner or an association may apply to the circuit court in the judicial circuit where the condominium is located for an order compelling early neutral evaluation only when:

(1) Mediation of the dispute pursuant to section 514B-C has been completed;

(2) A written request for early neutral evaluation has been delivered to and received by the other party or parties; and

(3) The parties have not agreed to an evaluator or a hearing date within forty-five days after a party receives a written request for early neutral evaluation.

(c) Any application made to the circuit court pursuant to subsection (b) shall be made and heard in a summary manner and in accordance with procedures for the making and hearing of motions. The prevailing party shall be entitled to an award of all reasonable attorneys' fees and costs.

(d) Each party to an early neutral evaluation shall bear the attorneys' fees and costs and other expenses of preparing

for and participating in the evaluation process incurred by the party, unless otherwise specified in:

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

(2) An order of the circuit court in connection with compelled participation in the evaluation process, in accordance with subsection (c); or

(3) An evaluator's timely written evaluation, as provided in subsection (g).

(e) A party to the dispute that has received a request for early neutral evaluation in accordance with this section shall not initiate an action in any court regarding the subject matter of the dispute until ninety-one days after completion of the hearing described in subsection (f), except as may be reasonably required to preserve any claim or defense. Any action so initiated shall be stayed pending completion of the evaluation process, except pursuant to the order of a court.

(f) The evaluation process shall be determined by the evaluator; provided that every evaluation process shall include the reasonable opportunity for each party to the dispute to:

(1) Submit a written position statement, together with supporting declarations or exhibits;

(2) Submit a written response to the position statement of any other party; and

(3) Set forth the essential points upon which an asserted claim or defense is based at an informal hearing convened by the evaluator; provided that the rules of evidence, except those concerning privileges, shall not apply at the hearing.

(g) Within ninety days following completion of the hearing, the evaluator shall provide the parties with a written evaluation of the claims and defenses presented by the parties in their written statements and oral presentations. The evaluation shall consist of:

(1) A reasoned decision, determining the prevailing party and what relief, if any, should be granted; and

(2) A separate document, containing an award of reasonable attorneys' fees and costs and other expenses to the prevailing party.

(h) The evaluator's timely written evaluation shall:

(1) Bind the parties with respect to the evaluator's award of attorneys' fees and costs and other expenses in connection with the evaluation process; and

(2) Serve as the basis for an award of all reasonable attorneys' fees and costs and other expenses to the prevailing party in any action or proceeding relating to the subject matter of the dispute whenever that party is also the party determined by the evaluator to have been the prevailing party.

(i) Support for any individual early neutral evaluation of a dispute shall not exceed what is appropriate under the circumstances, and in no event shall exceed a total of $.

§514B-G Qualifications of mediators, arbitrators, and evaluators. The commission may determine the qualifications of any individual who serves as a mediator, arbitrator, or evaluator in a matter involving payment from the condominium education trust fund, provided that:

(1) A mediator shall have five years of experience as a licensed attorney and a minimum of years full-time experience working with condominiums in a professional capacity;

(2) An arbitrator shall have five years of experience as a licensed attorney and a minimum of years

full-time experience working with condominiums in a professional capacity; and

(3) An evaluator shall have five years of experience as a licensed attorney and a minimum of years 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-H Disclosures by mediators, arbitrators, and evaluators. (a) Before accepting appointment, an individual who is requested to serve as a mediator or as an evaluator 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 or evaluator in the mediation or in the early neutral evaluation process, 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.

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

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

(d) An evaluation made by an evaluator may be excluded from consideration in the award of attorneys' fees and costs and other expenses if the evaluator failed to make a disclosure required by subsection (a).

(e) Disclosures by arbitrators shall be governed pursuant to chapter 658A."

PART III

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

"§421I-9 **Mediation and arbitration of disputes.** At the request of any party, any dispute concerning or involving one or more shareholders and a corporation, its board of directors, managing agent, resident manager, or one or more other shareholders relating to the interpretation, application, or enforcement of this chapter or the corporation's articles of incorporation, bylaws, or rules adopted in accordance with its bylaws shall be submitted first to mediation. When all reasonable efforts for mediation have been made and the dispute is not settled either in conference between the parties or through mediation, the dispute shall be submitted to [~~arbitration~~] alternative dispute resolution in the same manner and subject to the same requirements, to the extent practicable, which now apply to condominiums under [~~section 514B-162.~~] subpart of part VI of chapter 514B."

SECTION 5. Section 514B-3, Hawaii Revised Statutes, is amended by adding a new definition to be appropriately inserted and to read as follows:

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

(1) A unit owner and the board;

(2) A unit owner and the managing agent;

(3) Board members and the board; or

(4) An association and the managing agent."

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 of this chapter."

SECTION 7. Section 514B-72, Hawaii Revised Statutes, is amended by amending subsection (a) to read as follows:

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

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

(2) Beginning with the July 1, 2015, biennium registration, an additional annual condominium education trust fund fee in an amount equal to the product of $1.50 times the number of condominium units included in the registered project or association to be dedicated to supporting [~~mediation or voluntary binding arbitration of condominium related disputes.~~] alternative dispute resolution, as described in subpart of part VI of this chapter. The

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

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

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

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

(2) Adopt and amend budgets for revenues, expenditures, and reserves and collect assessments for common

expenses from unit owners, subject to section 514B-148;

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

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

(5) Make contracts and incur liabilities;

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

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

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

(A) Designation of additional areas to be common elements or subject to common expenses after the initial filing of the declaration or bylaws shall

require the approval of at least sixty-seven per cent of the unit owners;

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

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

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

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

(11) Impose charges and penalties, including late fees and interest, for late payment of assessments and levy reasonable fines for violations of the declaration, bylaws, rules, and regulations of the association, [~~either~~] in accordance with [~~the bylaws or, if the bylaws are silent, pursuant to a resolution adopted by the board that establishes a fining procedure that states the basis for the fine and allows an appeal to the board of the fine with notice and an opportunity to be heard and providing that if the fine is paid, the unit owner shall have the right to initiate a dispute resolution process as provided by sections 514B-161, 514B-162, or by filing a request for an administrative hearing under a pilot program administered by the department of commerce and consumer affairs;~~] subpart of part VI of this chapter and this section;

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

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

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

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

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

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

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

(19) By regulation, subject to [~~sections~~] section 514B-146[~~, 514B-161, and 514B-162,~~] and subpart of part VI of this chapter, require that disputes between the board and unit owners or between two or more unit owners regarding the condominium be

submitted to nonbinding alternative dispute resolution in the manner described in the regulation as a prerequisite to commencement of 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 unpaid for the share of the common expenses chargeable to any unit shall constitute a lien on the unit with priority over all other liens, except:

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

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

provided that a lien recorded by an association for unpaid assessments shall expire six years from the date of recordation unless proceedings to enforce the lien are instituted before the expiration of the lien; provided further that the expiration of a recorded lien shall in no way affect the association's automatic lien that arises pursuant to this subsection or the

declaration or bylaws. Any proceedings to enforce an association's lien for any assessment shall be instituted within six years after the assessment became due; provided that if the owner of a unit subject to a lien of the association files a petition for relief under the United States Bankruptcy Code (11 U.S.C. §101 et seq.), the period of time for instituting proceedings to enforce the association's lien shall be tolled until thirty days after the automatic stay of proceedings under section 362 of the United States Bankruptcy Code (11 U.S.C. §362) is lifted.

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

In any foreclosure described in this section, the unit owner shall be required to pay a reasonable rent for the unit, if so provided in the bylaws or the law, and the plaintiff in the foreclosure shall be entitled to the appointment of a receiver to collect the rent owed by the unit owner or any tenant of the unit. If the association is the plaintiff, it may request that its managing agent be appointed as receiver to collect the rent from the tenant. The managing agent or board, acting on behalf of the association and in the name of the association, unless prohibited by the declaration, may bid on the unit at foreclosure sale, and acquire and hold, lease, mortgage, and convey the unit. Action to recover a money judgment for unpaid common expenses shall be maintainable without foreclosing or waiving the lien securing the unpaid common expenses owed.

(b) Except as provided in subsection (j), when the mortgagee of a mortgage of record or other purchaser of a unit obtains title to the unit as a result of foreclosure of the mortgage, the acquirer of title and the acquirer's successors and assigns shall not be liable for the share of the common expenses or assessments by the association chargeable to the

unit that became due [~~prior to~~] before the acquisition of title to the unit by the acquirer. The unpaid share of common expenses or assessments shall be deemed to be common expenses collectible from all of the unit owners, including the acquirer and the acquirer's successors and assigns. The mortgagee of record or other purchaser of the unit shall be deemed to acquire title and shall be required to pay the unit's share of common expenses and assessments beginning:

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

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

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

(4) Upon the recording of the instrument of conveyance;

whichever occurs first; provided that the mortgagee of record or other purchaser of the unit shall not be deemed to acquire title under paragraph (1), (2), or (3), if transfer of title is delayed past the thirty-six days specified in paragraph (1), the sixty days specified in paragraph (2), or the thirty days

specified in paragraph (3), when a person who appears at the hearing on the motion or a party to the foreclosure action requests reconsideration of the motion or order to confirm sale, objects to the form of the proposed order to confirm sale, appeals the decision of the court to grant the motion to confirm sale, or the debtor or mortgagor declares bankruptcy or is involuntarily placed into bankruptcy. In any [~~such~~] case, the mortgagee of record or other purchaser of the unit shall be deemed to acquire title upon recordation of the instrument of conveyance.

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

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

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

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

~~(d) A unit owner who disputes the information in the written statement received from the association pursuant to subsection (c) may request a subsequent written statement that 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.~~

~~(f) A unit owner who pays an association the full amount of the common expenses claimed by the association may file in small claims court or require the association to mediate to resolve any disputes concerning the amount or validity of the association's common expense claim. If the unit owner and the association are unable to resolve the dispute through mediation, either party may file for arbitration under section 514B-162; provided that a unit owner may only file for arbitration if all amounts claimed by the association as common expenses are paid in full on or before the date of filing. If the unit owner fails to keep all association common expense assessments current during the arbitration, the association may ask the arbitrator to temporarily suspend the arbitration proceedings. If the unit owner pays all association common expense assessments within thirty days of the date of suspension, the unit owner may ask~~

~~the arbitrator to recommence the arbitration proceedings. If the unit owner fails to pay all association common expense assessments by the end of the thirty-day period, the association may ask the arbitrator to dismiss the arbitration proceedings. The unit owner shall be entitled to a refund of any amounts paid as common expenses to the association that are not owed.~~

~~(g) A unit owner who contests the amount of any attorneys' fees and costs, penalties or fines, late fees, lien filing fees, or any other charges, except common expense assessments, may make a demand in writing for mediation on the validity of those charges. The unit owner has thirty days from the date of the written statement requested pursuant to subsection (d) to file demand for mediation on the disputed charges, other than common expense assessments. If the unit owner fails to file for mediation within thirty days of the date of the written statement requested pursuant to subsection (d), the association may proceed with collection of the charges. If the unit owner makes a request for mediation within thirty days, the association shall be prohibited from attempting to collect any of the disputed charges until the association has participated in the mediation. The mediation shall be completed within sixty~~

~~days of the unit owner's request for mediation; provided that if the mediation is not completed within sixty days or the parties are unable to resolve the dispute by mediation, the association may proceed with collection of all amounts due from the unit 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 withhold payment of a common expense assessment for any reason, but that the obligation to pay a common expense assessment may be disputed after the assessment has been paid in full. The association shall also include in the disclaimer that a unit owner may dispute other assessments, apart from a common expense assessment, before making payment, and that the rights to contest assessments are described in section 514B-D and this section.

(e) 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.

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

(1) A paid assessment; or

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

A unit owner who elects to request mediation shall do so within thirty days after the date of the statement described in subsection (d). A timely demand for mediation shall stay an association's effort to collect the contested assessment for sixty days.

The unit owner shall be entitled to a refund of any amounts paid that are determined by an early neutral evaluator to have not been owed.

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

(h) In conjunction with or as an alternative to foreclosure proceedings under subsection (a), where a unit is owner-occupied, the association may authorize its managing agent or board to, after sixty days' written notice to the unit owner and to the unit's first mortgagee of the nonpayment of the unit's share of the common expenses, terminate the delinquent

unit's access to the common elements and cease supplying a delinquent unit with any and all services normally supplied or paid for by the association. Any terminated services and privileges shall be restored upon payment of all delinquent assessments but need not be restored until payment in full is received.

(i) Before the board or managing agent may take the actions permitted under subsection (h), the board shall adopt a written policy providing for [~~such~~] the actions and have the policy approved by a majority vote of the unit owners at an annual or special meeting of the association or by the written consent of a majority of the unit owners.

(j) Subject to this subsection, and subsections (k) and (l), the board may specially assess the amount of the unpaid regular monthly common assessments for common expenses against a mortgagee or other purchaser who, in a judicial or nonjudicial power of sale foreclosure, purchases a delinquent unit; provided that the mortgagee or other purchaser may require the association to provide at no charge a notice of the association's intent to claim lien against the delinquent unit for the amount of the special assessment, prior to the

subsequent purchaser's acquisition of title to the delinquent unit. The notice shall state the amount of the special assessment, how that amount was calculated, and the legal description of the unit.

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

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

"Completion" means:

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

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

"Regular monthly common assessments" does not include:

(1) Any other special assessment, except for a special assessment imposed on all units as part of a budget adopted pursuant to section 514B-148, including

commercial property assessed financing assessments imposed pursuant to section 196-64.5;

(2) Late charges, fines, or penalties;

(3) Interest assessed by the association;

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

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

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

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

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

(2) Any maintenance fee delinquency against the unit;

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

(4) Any costs incurred by the association for the rental, repair, maintenance, or rehabilitation of the unit while the association is in possession of the unit including monthly association maintenance fees, management fees, real estate commissions, cleaning and repair expenses for the unit, and general excise taxes paid on rental income;

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

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

"(g) Subject to the procedures of section [~~514B-157~~] 514B-A and any rules adopted by the commission, any unit owner whose association board fails to comply with this section may enforce compliance by the board. In any proceeding to enforce compliance, a board that has not prepared an annual operating

budget and reserve study shall have the burden of proving it has complied with this section."

SECTION 13. Section 514B-157, Hawaii Revised Statutes, is repealed.

["~~[§514B-157] Attorneys' fees, delinquent assessments, and expenses of enforcement~~. ~~(a) All costs and expenses, including reasonable attorneys' fees, incurred by or on behalf of the association for:~~

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

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

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

~~against an owner, occupant, tenant, employee of an owner, or any other person who may in any manner use the property, shall be promptly paid on demand to the association by the person or persons; provided that if the claims upon which the association takes any action are not substantiated, all costs and expenses,~~

~~including reasonable attorneys' fees, incurred by any applicable person or persons as a result of the action of the association, shall be promptly paid on demand to the person or persons by the association.~~

~~(b) If any claim by an owner is substantiated in any 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.~~"]

SECTION 14. Chapter 514B, part VI, subpart D, Hawaii Revised Statutes, is repealed.

PART IV

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

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

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

S.B. NO. 146 S.D. 1

Report Title:
Condominiums; Alternative Dispute Resolution; Mediation

Description:
Amends the conditions and procedures of alternative dispute resolution methods for condominium-related disputes. Effective 7/1/2050. (SD1)

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

