
A BILL FOR AN ACT

RELATING TO CONDOMINIUM ALTERNATIVE DISPUTE RESOLUTION.

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

1 PART I

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

10 PART II

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

14 "§514B-A Attorneys' fees and costs. (a) In any action or
15 proceeding concerning the:

16 (1) Collection of any delinquent assessments;

17 (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 the costs and expenses; provided that these amounts
14 may be disputed in accordance with section 514B-146 if those
15 amounts have not been awarded pursuant to the judgment of a
16 court or the award of an arbitrator.

17 **§514B-B Fines; when collectible.** (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 that were
- 6 violated by 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 collectible once 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) Except as provided in
6 subsection (c), the evaluative mediation of a condominium-
7 related dispute described in subsection (b) shall be mandatory
8 upon the written request of a party to the dispute.
9 Participation in evaluative mediation of a condominium-related
10 dispute may be compelled pursuant to the procedures described in
11 this section.

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

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

- 18 (1) Threatened property damage or threats to the health or
19 safety of unit owners or any other person;
- 20 (2) Assessments, except as provided in section 514B-146;
- 21 (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 shall be authorized for binding
7 arbitration of a condominium-related dispute 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 by the outcome of the arbitration, in accordance
12 with and subject to chapter 658A.

13 (b) Any individual binding arbitration supported with
14 funds from the condominium education trust fund pursuant to
15 section 514B-71 shall:

16 (1) Include a fee of \$150 to be paid by each party to the
17 arbitrator; provided that moneys from the trust fund
18 may be used to pay the fee for each unit owner who
19 demonstrates to the satisfaction of the commission
20 that the fee will pose an unreasonable economic
21 burden; and



1 (2) Receive no more from the trust fund than is
2 appropriate under the circumstances, and in no event
3 more than a total of \$6,000.

4 **§514B-F Qualifications of mediators and arbitrators.** The
5 commission may determine the qualifications of any individual
6 who serves as a mediator or an arbitrator in a matter involving
7 payment from the condominium education trust fund; provided
8 that:

9 (1) A mediator shall have at least three years of
10 mediation experience; and

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

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

18 **§514B-G Disclosures by mediators and arbitrators.** (a)

19 Before accepting appointment, an individual who is requested to
20 serve as a mediator shall disclose to all parties involved in
21 the condominium-related dispute any known facts that a



1 reasonable person would consider likely to affect the
2 impartiality of the mediator in the mediation, including but not
3 limited to:

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

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

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

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

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

18 PART IV

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



1 "**§421I-9 Mediation and arbitration of disputes.** At the
2 request of any party, any dispute concerning or involving one or
3 more shareholders and a corporation, its board of directors,
4 managing agent, resident manager, or one or more other
5 shareholders relating to the interpretation, application, or
6 enforcement of this chapter or the corporation's articles of
7 incorporation, bylaws, or rules adopted in accordance with its
8 bylaws shall be submitted first to mediation. When all
9 reasonable efforts for mediation have been made and the dispute
10 is not settled either in conference between the parties or
11 through mediation, the dispute shall be submitted to
12 [~~arbitration~~] alternative dispute resolution in the same manner
13 and subject to the same requirements, to the extent practicable,
14 which [~~now~~] apply to condominiums under [~~section 514B-162.~~]
15 subpart of part VI of chapter 514B."

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

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

20 (1) A unit owner and the board;

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



1 (3) Board members and the board; or

2 (4) An association and the managing agent.

3 "Evaluative mediation" means a mediation process in which
4 the mediator:

5 (1) Facilitates communication and the exchange of
6 proposals; and

7 (2) If the parties do not reach a settlement in the
8 condominium-related dispute, provides an oral or
9 written evaluation of:

10 (A) The strengths and weaknesses of each party's
11 positions;

12 (B) Each party's potential liability exposure; and

13 (C) Other factors that may affect the potential
14 outcome of the condominium-related dispute."

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

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



- 1 (1) Education and research in the field of condominium
2 management, condominium project registration, and real
3 estate, for the benefit of the public and those
4 required to be registered under this chapter;
- 5 (2) The improvement and more efficient administration of
6 associations;
- 7 (3) Expeditious and inexpensive procedures for resolving
8 association disputes; and
- 9 (4) Support for [mediation of condominium related
10 disputes; and
- 11 ~~(5) Support for voluntary binding arbitration between~~
12 ~~parties in condominium related disputes, pursuant to~~
13 ~~section 514B-162.5.] alternative dispute resolution,~~
- 14 as described in subpart of part VI."

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

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

- 19 (1) A condominium education trust fund fee within one year
20 after the recordation of the purchase of the first
21 unit or within thirty days of the association's first



1 meeting, and thereafter, on or before June 30 of every
2 odd-numbered year, as prescribed by rules adopted
3 pursuant to chapter 91; and

4 (2) Beginning with the July 1, 2015, biennium
5 registration, an additional annual condominium
6 education trust fund fee in an amount equal to the
7 product of \$1.50 times the number of condominium units
8 included in the registered project or association to
9 be dedicated to supporting [~~mediation or voluntary~~
10 ~~binding arbitration of condominium related disputes.~~]
11 alternative dispute resolution, as described in
12 subpart of part VI. The additional condominium
13 education trust fund fee shall total \$3 per unit until
14 the commission adopts rules pursuant to chapter 91.
15 On June 30 of every odd-numbered year, any unexpended
16 additional amounts paid into the condominium education
17 trust fund and initially dedicated to supporting
18 [~~mediation or voluntary binding arbitration~~]
19 alternative dispute resolution of [condominium
20 ~~related] condominium-related disputes, as required by~~



1 this paragraph, shall be used for educational purposes
2 as provided in section 514B-71(a)(1), (2), and (3)."

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

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

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

10 (2) Adopt and amend budgets for revenues, expenditures,
11 and reserves and collect assessments for common
12 expenses from unit owners, subject to section
13 514B-148;

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

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



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



1 manager, which may be purchased with the approval
2 of the board;

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

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

12 (11) Impose charges and penalties, including late fees and
13 interest, for late payment of assessments and levy
14 reasonable fines for violations of the declaration,
15 bylaws, rules, and regulations of the association,
16 [~~either~~] in accordance with [~~the bylaws or, if the~~
17 ~~bylaws are silent, pursuant to a resolution adopted by~~
18 ~~the board that establishes a fining procedure that~~
19 ~~states the basis for the fine and allows an appeal to~~
20 ~~the board of the fine with notice and an opportunity~~
21 ~~to be heard and providing that if the fine is paid,~~



1 ~~the unit owner shall have the right to initiate a~~
 2 ~~dispute resolution process as provided by sections~~
 3 ~~514B-161, 514B-162, or by filing a request for an~~
 4 ~~administrative hearing under a pilot program~~
 5 ~~administered by the department of commerce and~~
 6 ~~consumer affairs;]~~ section 514B-B and this section,
 7 subject to subpart ;

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

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

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

17 (15) Assign its right to future income, including the right
 18 to receive common expense assessments, but only to the
 19 extent expressly provided in section 514B-105(e)
 20 ~~[expressly so provides];~~



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

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

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

9 ~~(19) By regulation, subject to sections 514B-146, 514B-161,~~
10 ~~and 514B-162, require that disputes between the board~~
11 ~~and unit owners or between two or more unit owners~~
12 ~~regarding the condominium be submitted to nonbinding~~
13 ~~alternative dispute resolution in the manner described~~
14 ~~in the regulation as a prerequisite to commencement of~~
15 ~~a judicial proceeding]."~~

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

18 "(c) Any payments made by or on behalf of a unit owner
19 shall first be applied to outstanding common expenses that are
20 assessed to all unit owners in proportion to the common interest
21 appurtenant to their respective units, including commercial



1 property assessed financing assessment expenses incurred for
2 improvements financed pursuant to section 196-64.5. Only after
3 the outstanding common expenses have been paid in full may the
4 payments be applied to other charges owed to the association,
5 including assessed charges to the unit such as ground lease
6 rent, utility sub-metering, storage lockers, parking stalls,
7 boat slips, insurance deductibles, and cable. After these
8 charges are paid, other charges, including unpaid late fees,
9 legal fees, collectible fines, and interest, may be assessed in
10 accordance with an application of payment policy adopted by the
11 board; provided that if a unit owner has designated that any
12 payment is for a specific charge that is not a common expense as
13 described in this subsection, the payment may be applied in
14 accordance with the unit owner's designation even if common
15 expenses remain outstanding."

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

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



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

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

14 **"§514B-146 Association fiscal matters; lien for**
15 **assessments.** (a) All sums assessed by the association but
16 unpaid for the share of the common expenses chargeable to any
17 unit shall constitute a lien on the unit with priority over all
18 other liens, ~~except~~ for the following:

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



1 (2) Except as provided in subsection (j), all sums unpaid
2 on any mortgage of record that was recorded before the
3 recordation of a notice of a lien by the association,
4 and costs and expenses including attorneys' fees
5 provided in the mortgages;
6 provided that a lien recorded by an association for unpaid
7 assessments shall expire six years from the date of recordation
8 unless proceedings to enforce the lien are instituted before the
9 expiration of the lien; provided further that the expiration of
10 a recorded lien shall in no way affect the association's
11 automatic lien that arises pursuant to this subsection or the
12 declaration or bylaws. Any proceedings to enforce an
13 association's lien for any assessment shall be instituted within
14 six years after the assessment became due; provided that if the
15 owner of a unit subject to a lien of the association files a
16 petition for relief under the United States Bankruptcy Code (11
17 U.S.C. §101 et seq.), the period of time for instituting
18 proceedings to enforce the association's lien shall be tolled
19 until thirty days after the automatic stay of proceedings under
20 section 362 of the United States Bankruptcy Code (11 U.S.C.
21 §362) is lifted.



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

11 In any foreclosure described in this section, the unit
12 owner shall be required to pay a reasonable rent for the unit,
13 if so provided in the bylaws or the law, and the plaintiff in
14 the foreclosure shall be entitled to the appointment of a
15 receiver to collect the rent owed by the unit owner or any
16 tenant of the unit. If the association is the plaintiff, it may
17 request that its managing agent be appointed as receiver to
18 collect the rent from the tenant. The managing agent or board,
19 acting on behalf of the association and in the name of the
20 association, unless prohibited by the declaration, may bid on
21 the unit at foreclosure sale, and acquire and hold, lease,



1 mortgage, and convey the unit. Action to recover a money
2 judgment for unpaid common expenses shall be maintainable
3 without foreclosing or waiving the lien securing the unpaid
4 common expenses owed.

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

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



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

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

6 (4) Upon the recording of the instrument of conveyance;
7 whichever occurs first; provided that the mortgagee of record or
8 other purchaser of the unit shall not be deemed to acquire title
9 under paragraph (1), (2), or (3), if transfer of title is
10 delayed past the thirty-six days specified in paragraph (1), the
11 sixty days specified in paragraph (2), or the thirty days
12 specified in paragraph (3), when a person who appears at the
13 hearing on the motion or a party to the foreclosure action
14 requests reconsideration of the motion or order to confirm sale,
15 objects to the form of the proposed order to confirm sale,
16 appeals the decision of the court to grant the motion to confirm
17 sale, or the debtor or mortgagor declares bankruptcy or is
18 involuntarily placed into bankruptcy. In any [~~such~~] case, the
19 mortgagee of record or other purchaser of the unit shall be
20 deemed to acquire title upon recordation of the instrument of
21 conveyance.



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

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

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

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

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

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

19 ~~(2) A unit owner has a right to demand mediation or~~
20 ~~arbitration to resolve disputes about the amount or~~
21 ~~validity of an association's common expense~~



1 ~~assessment; provided that the unit owner immediately~~
2 ~~pays the common expense assessment in full and keeps~~
3 ~~common expense assessments current;~~

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

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

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

17 ~~(f) A unit owner who pays an association the full amount~~
18 ~~of the common expenses claimed by the association may file in~~
19 ~~small claims court or require the association to mediate to~~
20 ~~resolve any disputes concerning the amount or validity of the~~
21 ~~association's common expense claim. If the unit owner and the~~



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

17 ~~(g) A unit owner who contests the amount of any attorneys'~~
18 ~~fees and costs, penalties or fines, late fees, lien filing fees,~~
19 ~~or any other charges, except common expense assessments, may~~
20 ~~make a demand in writing for mediation on the validity of those~~
21 ~~charges. The unit owner has thirty days from the date of the~~



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

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



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

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

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

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

13 In responding to the request, the association shall include a
14 disclaimer that under state law, a unit owner has no right to
15 withhold payment of a common expense assessment for any reason,
16 but that the obligation to pay a common expense assessment may
17 be disputed after the assessment has been paid in full. The
18 association shall also include in the disclaimer that a unit
19 owner may dispute other assessments, apart from a common expense
20 assessment, before making payment, and that the right to contest
21 assessments is described in section 514B-D and this section.



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

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

6 (1) A paid assessment; or

7 (2) An unpaid assessment other than a common expense
8 assessment or fine. Fines shall be subject to section
9 514B-B.

10 A unit owner who requests evaluative mediation shall do so
11 before the initiation of an action concerning the assessment and
12 within thirty days after the date of the statement described in
13 subsection (d). A timely demand for evaluative mediation shall
14 stay an association's effort to collect the contested assessment
15 for sixty days.

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

20 (h) In conjunction with or as an alternative to
21 foreclosure proceedings under subsection (a), where a unit is



1 owner-occupied, the association may authorize its managing agent
2 or board to, after sixty days' written notice to the unit owner
3 and to the unit's first mortgagee of the nonpayment of the
4 unit's share of the common expenses, terminate the delinquent
5 unit's access to the common elements and cease supplying a
6 delinquent unit with any and all services normally supplied or
7 paid for by the association. Any terminated services and
8 privileges shall be restored upon payment of all delinquent
9 assessments but need not be restored until payment is received
10 in full [~~is received~~].

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

17 (j) Subject to this subsection, and subsections (k) and
18 (l), the board may specially assess the amount of the unpaid
19 regular monthly common assessments for common expenses against a
20 mortgagee or other purchaser who, in a judicial or nonjudicial
21 power of sale foreclosure, purchases a delinquent unit; provided



1 that the mortgagee or other purchaser may require the
2 association to provide, at no charge, a notice of the
3 association's intent to claim lien against the delinquent unit
4 for the amount of the special assessment, [~~prior to~~] before the
5 subsequent purchaser's acquisition of title to the delinquent
6 unit. The notice shall state the amount of the special
7 assessment, how that amount was calculated, and the legal
8 description of the unit.

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

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

16 "Completion" means:

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

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



- 1 "Regular monthly common assessments" does not include:
- 2 (1) Any other special assessment, except for a special
3 assessment imposed on all units as part of a budget
4 adopted pursuant to section 514B-148, including
5 commercial property assessed financing assessments
6 imposed pursuant to section 196-64.5;
- 7 (2) Late charges, fines, or penalties;
- 8 (3) Interest assessed by the association;
- 9 (4) Any lien arising out of the assessment; or
- 10 (5) Any fees or costs related to the collection or
11 enforcement of the assessment, including attorneys'
12 fees and court costs.
- 13 (m) The cost of a release of any lien filed pursuant to
14 this section shall be paid by the party requesting the release.
- 15 (n) After any judicial or nonjudicial foreclosure
16 proceeding in which the association acquires title to the unit,
17 any excess rental income received by the association from the
18 unit shall be paid to existing lien holders based on the
19 priority of lien, and not on a pro rata basis, and shall be
20 applied to the benefit of the unit owner. For purposes of this
21 subsection, excess rental income shall be any net income



1 received by the association after a court has issued a final
2 judgment determining the priority of a senior mortgagee and
3 after paying, crediting, or reimbursing the association or a
4 third party for:

- 5 (1) The lien for delinquent assessments pursuant to
6 subsections (a) and (b);
- 7 (2) Any maintenance fee delinquency against the unit;
- 8 (3) Attorney's fees and other collection costs related to
9 the association's foreclosure of the unit; or
- 10 (4) Any costs incurred by the association for the rental,
11 repair, maintenance, or rehabilitation of the unit
12 while the association is in possession of the unit
13 including monthly association maintenance fees,
14 management fees, real estate commissions, cleaning and
15 repair expenses for the unit, and general excise taxes
16 paid on rental income;

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

19 SECTION 12. Chapter 514B, part VI, subpart D, Hawaii
20 Revised Statutes, is repealed.



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

3 ~~["§514B-157 Attorneys' fees, delinquent assessments, and~~
4 ~~expenses of enforcement. (a) All costs and expenses, including~~
5 ~~reasonable attorneys' fees, incurred by or on behalf of the~~
6 ~~association 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.~~

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

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

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

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



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

5 PART V

6 SECTION 14. In codifying the new sections added by
7 sections 2 and 3 of this Act, the revisor of statutes shall
8 substitute appropriate section numbers for the letters used in
9 designating the new sections in this Act.

10 SECTION 15. Statutory material to be repealed is bracketed
11 and stricken. New statutory material is underscored.

12 SECTION 16. This Act shall take effect on July 1, 3000.



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 7/1/3000. (HD1)

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

