
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; provided that the declaration, bylaws,
- 13 or house rules may allow for a longer time to
- 14 initiate an appeal;
- 15 (3) Subject to its jurisdictional limits, the small claims
- 16 division of the district court in the circuit where
- 17 the condominium is located may finally determine the
- 18 validity and the amount of a fine if the person first
- 19 timely appeals imposition of a fine to the board and
- 20 initiates an action within thirty days after receipt
- 21 of notice of disposition of the appeal; and



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

- 3 (1) Facilitative mediation;
- 4 (2) Evaluative mediation; and
- 5 (3) Binding arbitration.

6 **§514B-D Evaluative mediation.** (a) Except as provided in
7 subsection (c), the evaluative mediation of a condominium-
8 related dispute described in subsection (b) shall be mandatory
9 upon the written request of a party to the dispute.

10 Participation in evaluative mediation of a condominium-related
11 dispute may be compelled pursuant to the procedures described in
12 this section.

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

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

- 19 (1) Threatened property damage or threats to the health or
20 safety of unit owners or any other person;
- 21 (2) Assessments, except as provided in section 514B-146;



- 1 (3) Personal injury claims;
- 2 (4) Matters that would affect the availability of any
- 3 coverage pursuant to an insurance policy obtained by
- 4 or on behalf of an association;
- 5 (5) The same or substantially similar issues that have
- 6 already been mediated; or
- 7 (6) Issues that are subject to an action or a binding
- 8 alternative dispute resolution mechanism that has
- 9 already been commenced.
- 10 (d) A unit owner or an association may apply to the
- 11 circuit court in the judicial circuit where the condominium is
- 12 located for an order compelling evaluative mediation only when:
- 13 (1) Evaluative mediation of the dispute is mandatory
- 14 pursuant to subsection (a);
- 15 (2) A written request for evaluative mediation has been
- 16 delivered to and received by the other party; and
- 17 (3) The parties have not agreed to a mediator or an
- 18 evaluative mediation date within forty-five days after
- 19 a party receives a written request for evaluative
- 20 mediation.



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

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

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

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

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

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



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

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

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

13 (3) May include disputes and parties in addition to those
14 identified in the condominium-related dispute;
15 provided that all parties to the condominium-related
16 dispute consent in writing.

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



1 action or proceeding, and refer the matter to evaluative
2 mediation; provided that:

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

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

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

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

12 (2) All parties to the dispute agree in writing to be
13 bound by the outcome of the arbitration, in accordance
14 with and subject to chapter 658A.

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

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



1 that the fee will pose an unreasonable economic
2 burden; and

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

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

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

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

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

20 **§514B-G Disclosures by mediators and arbitrators.** (a)

21 Before accepting appointment, an individual who is requested to



1 serve as a mediator shall disclose to all parties involved in
2 the condominium-related dispute any known facts that a
3 reasonable person would consider likely to affect the
4 impartiality of the mediator in the mediation, including but not
5 limited to:

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

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

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

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

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

20 PART IV



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

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

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

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



- 1 (1) A unit owner and the board or association;
- 2 (2) A unit owner and the managing agent;
- 3 (3) Board members and the board;
- 4 (4) A developer and the board or association; or
- 5 (5) An association or board and the managing agent.

6 "Evaluative mediation" means a mediation process in which
 7 the mediator:

- 8 (1) Facilitates communication and the exchange of
 9 proposals; and
- 10 (2) If the parties do not reach a settlement in the
 11 condominium-related dispute, provides an oral or
 12 written evaluation of:
 - 13 (A) The strengths and weaknesses of each party's
 14 positions;
 - 15 (B) Each party's potential liability exposure; and
 - 16 (C) Other factors that may affect the potential
 17 outcome of the condominium-related dispute."

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

20 "(a) The commission shall establish a condominium
 21 education trust fund that the commission shall use for

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

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

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

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



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



1 alternative dispute resolution of [~~condominium~~
2 ~~related~~] condominium-related disputes, as required by
3 this paragraph, shall be used for educational purposes
4 as provided in section 514B-71(a)(1), (2), and (3)."

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

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

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



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



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

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

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

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



1 ~~the board of the fine with notice and an opportunity~~
2 ~~to be heard and providing that if the fine is paid,~~
3 ~~the unit owner shall have the right to initiate a~~
4 ~~dispute resolution process as provided by sections~~
5 ~~514B-161, 514B-162, or by filing a request for an~~
6 ~~administrative hearing under a pilot program~~
7 ~~administered by the department of commerce and~~
8 ~~consumer affairs;] section 514B-B and this section,~~
9 subject to subpart D;

- 10 (12) Impose reasonable charges for the preparation and
11 recordation of amendments to the declaration,
12 documents requested for resale of units, or statements
13 of unpaid assessments;
- 14 (13) Provide for cumulative voting through a provision in
15 the bylaws;
- 16 (14) Provide for the indemnification of its officers,
17 board, committee members, and agents, and maintain
18 directors' and officers' liability insurance;
- 19 (15) Assign its right to future income, including the right
20 to receive common expense assessments, but only to the



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

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

20 "(c) Any payments made by or on behalf of a unit owner
21 shall first be applied to outstanding common expenses that are



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

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

20 "(a) Except as provided in the declaration, the bylaws,
21 subsection (b), or other provisions of this chapter, the board



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

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

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



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



1 until thirty days after the automatic stay of proceedings under
2 section 362 of the United States Bankruptcy Code (11 U.S.C.
3 §362) is lifted.

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

14 In any foreclosure described in this section, the unit
15 owner shall be required to pay a reasonable rent for the unit,
16 if so provided in the bylaws or the law, and the plaintiff in
17 the foreclosure shall be entitled to the appointment of a
18 receiver to collect the rent owed by the unit owner or any
19 tenant of the unit. If the association is the plaintiff, it may
20 request that its managing agent be appointed as receiver to
21 collect the rent from the tenant. The managing agent or board,



1 acting on behalf of the association and in the name of the
2 association, unless prohibited by the declaration, may bid on
3 the unit at foreclosure sale, and acquire and hold, lease,
4 mortgage, and convey the unit. Action to recover a money
5 judgment for unpaid common expenses shall be maintainable
6 without foreclosing or waiving the lien securing the unpaid
7 common expenses owed.

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



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

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

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

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



1 deemed to acquire title upon recordation of the instrument of
2 conveyance.

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

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

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

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

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

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



- 1 ~~(2) A unit owner has a right to demand mediation or~~
2 ~~arbitration to resolve disputes about the amount or~~
3 ~~validity of an association's common expense~~
4 ~~assessment; provided that the unit owner immediately~~
5 ~~pays the common expense assessment in full and keeps~~
6 ~~common expense assessments current;~~
- 7 ~~(3) Payment in full of the common expense assessment shall~~
8 ~~not prevent the owner from contesting the common~~
9 ~~expense assessment or receiving a refund of amounts~~
10 ~~not owed; and~~
- 11 ~~(4) If the unit owner contests any penalty or fine, late~~
12 ~~fee, lien filing fee, or other charges included in the~~
13 ~~assessment, except common expense assessments, the~~
14 ~~unit owner may demand mediation as provided in~~
15 ~~subsection (g) prior to paying those charges.~~
- 16 ~~(e) No unit owner shall withhold any common expense~~
17 ~~assessment claimed by the association. Nothing in this section~~
18 ~~shall limit the rights of an owner to the protection of all fair~~
19 ~~debt collection procedures mandated under federal and state law.~~
- 20 ~~(f) A unit owner who pays an association the full amount~~
21 ~~of the common expenses claimed by the association may file in~~



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

~~20 (g) A unit owner who contests the amount of any attorneys'
21 fees and costs, penalties or fines, late fees, lien filing fees,~~



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



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

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

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

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

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

17 In responding to the request, the association shall include a
18 disclaimer that under state law, a unit owner has no right to
19 withhold payment of a common expense assessment for any reason,
20 but that the obligation to pay a common expense assessment may
21 be disputed after the assessment has been paid in full. The



1 association shall also include in the disclaimer that a unit
2 owner may dispute other assessments, apart from a common expense
3 assessment, before making payment, and that the right to contest
4 assessments is described in section 514B-D and this section.

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

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

10 (1) A paid assessment; or

11 (2) An unpaid assessment other than a common expense
12 assessment or fine. Fines shall be subject to section
13 514B-B.

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

20 (g) An association may defend an assessment in court and
21 in evaluative mediation. The association may proceed to collect



1 an unpaid assessment by any legal means except when collection
2 efforts are stayed pursuant to subsection (f).

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

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



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

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

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

21 "Completion" means:



- 1 (1) In a nonjudicial power of sale foreclosure, when the
2 affidavit after public sale is recorded pursuant to
3 section 667-33; and
- 4 (2) In a judicial foreclosure, when a purchaser is deemed
5 to acquire title pursuant to subsection (b).
- 6 "Regular monthly common assessments" does not include:
- 7 (1) Any other special assessment, except for a special
8 assessment imposed on all units as part of a budget
9 adopted pursuant to section 514B-148, including
10 commercial property assessed financing assessments
11 imposed pursuant to section 196-64.5;
- 12 (2) Late charges, fines, or penalties;
- 13 (3) Interest assessed by the association;
- 14 (4) Any lien arising out of the assessment; or
- 15 (5) Any fees or costs related to the collection or
16 enforcement of the assessment, including attorneys'
17 fees and court costs.
- 18 (m) The cost of a release of any lien filed pursuant to
19 this section shall be paid by the party requesting the release.
- 20 (n) After any judicial or nonjudicial foreclosure
21 proceeding in which the association acquires title to the unit,



1 any excess rental income received by the association from the
2 unit shall be paid to existing lien holders based on the
3 priority of lien, and not on a pro rata basis, and shall be
4 applied to the benefit of the unit owner. For purposes of this
5 subsection, excess rental income shall be any net income
6 received by the association after a court has issued a final
7 judgment determining the priority of a senior mortgagee and
8 after paying, crediting, or reimbursing the association or a
9 third party for:

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



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

3 SECTION 12. Section 514B-163, Hawaii Revised Statutes, is
4 amended as follows:

5 1. By amending its title and subsection (a) to read:

6 "[~~§~~514B-163] **Trial de novo and appeal.** (a) The
7 submission of any dispute to [~~a~~] a nonbinding arbitration
8 [~~under section 514B-162~~] shall in no way limit or abridge the
9 right of any party to a trial de novo."

10 2. By amending subsection (d) to read:

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



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 SECTION 14. Section 514B-161, Hawaii Revised Statutes, is
6 repealed.

7 ~~["**S514B-161 Mediation.** (a) The mediation of a dispute~~
8 ~~between a unit owner and the board, unit owner and the managing~~
9 ~~agent, board members and the board, or directors and managing~~
10 ~~agents and the board shall be mandatory upon written request to~~
11 ~~the other party when:~~

12 ~~(1) The dispute involves the interpretation or enforcement~~
13 ~~of the association's declaration, bylaws, or house~~
14 ~~rules;~~

15 ~~(2) The dispute falls outside the scope of subsection (b);~~

16 ~~(3) The parties have not already mediated the same or a~~
17 ~~substantially similar dispute; and~~

18 ~~(4) An action or an arbitration concerning the dispute has~~
19 ~~not been commenced.~~

20 ~~(b) The mediation of a dispute between a unit owner and~~
21 ~~the board, unit owner and the managing agent, board members and~~



1 ~~the board, or directors and managing agents and the board shall~~
2 ~~not be mandatory when the dispute involves:~~

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

5 ~~(2) Assessments;~~

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

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

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

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

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

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



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

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

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

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

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

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



- 1 ~~(4) An order of the circuit court in connection with~~
2 ~~compelled mediation in accordance with subsection (e).~~
- 3 ~~(g) Any individual mediation supported with funds from the~~
4 ~~condominium education trust fund pursuant to section 514B-71:~~
- 5 ~~(1) Shall include a fee of \$375 to be paid by each party~~
6 ~~to the mediator;~~
- 7 ~~(2) Shall receive no more from the fund than is~~
8 ~~appropriate under the circumstances, and in no event~~
9 ~~more than \$3,000 total;~~
- 10 ~~(3) May include issues 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 ~~mediation at all times and the unit owner or developer~~
14 ~~and the board mutually consent in writing to the~~
15 ~~addition of the issues and parties; and~~
- 16 ~~(4) May include an evaluation by the mediator of any~~
17 ~~claims presented during the mediation.~~
- 18 ~~(h) A court or an arbitrator with jurisdiction may~~
19 ~~consider a timely request to stay any action or proceeding~~
20 ~~concerning a dispute that would be subject to mediation pursuant~~



1 ~~to subsection (a) in the absence of the action or proceeding,~~
2 ~~and refer the matter to mediation; provided that:~~

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

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

7 SECTION 15. Section 514B-162.5, Hawaii Revised Statutes,
8 is repealed.

9 ~~["**[§514B-162.5] Voluntary binding arbitration.** (a) Any~~
10 ~~parties permitted to mediate condominium related disputes~~
11 ~~pursuant to section 514B-161 may agree to enter into voluntary~~
12 ~~binding arbitration, which may be supported with funds from the~~
13 ~~condominium education trust fund pursuant to section 514B-71;~~
14 ~~provided that voluntary binding arbitration under this section~~
15 ~~may be supported with funds from the condominium education trust~~
16 ~~fund only after the parties have first attempted evaluative~~
17 ~~mediation.~~

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



Report Title:

Condominiums; Alternative Dispute Resolution; Facilitative Mediation; Evaluative Mediation; Binding Arbitration

Description:

Amends the conditions and procedures of alternative dispute resolution methods for condominium-related disputes, including the use of facilitative mediation, evaluative mediation, or binding arbitration. Effective 7/1/3000. (SD1)

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

