

ACT 277

S.B. NO. 2545

A Bill for an Act Relating to Condominiums.

Be It Enacted by the Legislature of the State of Hawaii:

SECTION 1. Chapter 514B, Hawaii Revised Statutes, is amended by adding a new section to be appropriately designated and to read as follows:

“§514B- Hearings. (a) If a dispute is not resolved by mediation as provided in section 514B-161, in addition to any other legal remedies that may be available, any party that participated in the mediation may file a request for a hearing with the office of administrative hearings as follows:

- (1) The party requesting the hearing must be a board of directors of a registered association pursuant to section 514B-103 or a unit owner who is a member of a registered association pursuant to section 514B-103;

- (2) The request for hearing shall be filed within thirty days from the final day of mediation;
 - (3) The request for hearing shall name one or more parties that participated in the mediation as an adverse party and identify the statutory provisions in dispute; and
 - (4) The subject matter of the hearing before the hearings officer may include any matter that was the subject of the mediation pursuant to section 514B-161.
- (b) The office of administrative hearings shall accept no more than thirty requests for hearing per fiscal year under this section.
- (c) The party requesting the hearing shall pay a filing fee of \$25 to the department of commerce and consumer affairs, and the failure to do so shall result in the request for hearing being rejected for filing. All other parties shall file a response, accompanied by a filing fee of \$25, to the department of commerce and consumer affairs, within twenty days of being served with the request for hearing.
- (d) The hearings officer appointed by the director of commerce and consumer affairs pursuant to section 26-9(f) shall have jurisdiction to review any request for hearing filed under subsection (a). The hearings officer shall have the power to issue subpoenas, administer oaths, hear testimony, find facts, make conclusions of law, and issue written decisions that shall be final and conclusive, unless a party adversely affected by the decision files an appeal in the circuit court under section 91-14.
- (e) Rules of practice and procedure of the department of commerce and consumer affairs shall govern all proceedings brought under this section. The burden of proof, including the burden of producing the evidence and the burden of persuasion, shall be upon the party initiating the proceeding. Proof of a matter shall be by a preponderance of the evidence.
- (f) Hearings to review and make determinations upon any requests for hearings filed under subsection (a) shall commence within sixty days following the receipt of the request for hearing. The hearings officer shall issue written findings of fact, conclusions of law, and an order as expeditiously as practicable after the hearing has been concluded.
- (g) Each party to the hearing shall bear the party's own costs, including attorney's fees, unless otherwise ordered by the hearings officer.
- (h) Any party to a proceeding under this section who is aggrieved by a final decision of a hearings officer may apply for judicial review of that decision pursuant to section 91-14; provided that any party seeking judicial review pursuant to section 91-14 shall be responsible for the costs of preparing the record on appeal, including the cost of preparing the transcript of the hearing.
- (i) The department of commerce and consumer affairs may adopt rules and forms, pursuant to chapter 91, to effectuate the purpose of this section and to implement its provisions."

SECTION 2. The director of commerce and consumer affairs shall prepare and submit to the legislature, twenty days prior to the convening of the 2007 and 2008 regular sessions, a report containing the director's evaluation of the operation and effect of section 1 of this Act. The report shall include a summary of the requests for hearing brought under the section, the disposition of such requests for hearing, an appraisal of the effectiveness of the section, and recommendations for changes, modifications, or repeal of the section or parts thereof with accompanying reasons and data.

SECTION 3. New statutory material is underscored.¹

SECTION 4. This Act shall take effect on June 29, 2006, and shall be repealed on June 30, 2009.

(Approved July 5, 2006.)

Note

1. Edited pursuant to HRS §23G-16.5.