

JAN 25 2006

A BILL FOR AN ACT

RELATING TO PLANNED COMMUNITY ASSOCIATIONS.

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

1 SECTION 1. Chapter 421J, Hawaii Revised Statutes, is
2 amended by adding a new section to be appropriately designated
3 and to read as follows:

4 "§421J- Hearings. (a) If a dispute is not resolved by
5 mediation as provided in section 421J-13, in addition to any
6 other legal remedies that may be available, any party that
7 participated in the mediation may file a request for a hearing
8 with the office of administrative hearings of the department of
9 commerce and consumer affairs, as follows:

10 (1) The party requesting the hearing shall be a board of
11 directors of a duly registered association or a
12 member;

13 (2) The request for hearing shall be filed within thirty
14 days from the final day of mediation;

15 (3) The request for hearing shall name one or more parties
16 that participated in the mediation as an adverse party
17 and identify the statutory provisions in dispute; and



1 (4) The subject matter of the hearing before the hearing
2 officer may include any matter that was the subject of
3 the mediation pursuant to section 421J-13.

4 (b) The office of administrative hearing for the
5 department of commerce and consumer affairs shall accept no more
6 than fifteen requests for hearing per fiscal year under this
7 section.

8 (c) The party requesting the hearing shall pay a filing
9 fee of \$50 to the department of commerce and consumer affairs,
10 and the failure to do so shall result in the request for hearing
11 being rejected for filing. All other parties shall file a
12 response, accompanied by a filing fee of \$50 to the department
13 of commerce and consumer affairs, within twenty days of being
14 served with the request for hearing.

15 (d) The hearings officers appointed by the director of
16 commerce and consumer affairs pursuant to section 26-9(f) shall
17 have jurisdiction to review any request for hearing filed under
18 subsection (a). The hearings officers shall have the power to
19 issue subpoenas, administer oaths, hear testimony, find facts,
20 make conclusions of law, and issue written decisions that shall
21 be final and conclusive, unless a party adversely affected by

1 the decision files an appeal in the circuit court under section
2 91-14.

3 (e) Rules of practice and procedure of the department of
4 commerce and consumer affairs shall govern all proceedings
5 brought under this section. The burden of proof, including the
6 burden of producing the evidence and the burden of persuasion,
7 shall be upon the party initiating the proceeding. Proof of a
8 matter shall be by a preponderance of the evidence.

9 (f) Hearings to review and make determinations upon any
10 requests for hearings filed under subsection (a) shall commence
11 within sixty days following the receipt of the request for
12 hearing. The hearing officer shall issue written findings of
13 fact, conclusions of law, and an order as expeditiously as
14 practicable after the hearing has been concluded.

15 (g) Each party to the hearing shall bear the party's own
16 costs, including attorney's fees, unless otherwise ordered by
17 the hearing officer.

18 (h) Any party to a proceedings under this section who is
19 aggrieved by a final decision of a hearings officer may apply
20 for judicial review of that decision pursuant to section 91-14;
21 provided that any party seeking judicial review pursuant to
22 section 91-14 shall be responsible for the costs of preparing



1 the record on appeal, including the cost of preparing the
2 transcript of the hearing.

3 (i) The department of commerce and consumer affairs may
4 adopt rules and forms, pursuant to chapter 91, to effectuate the
5 purpose of this section and to implement its provisions."

6 SECTION 2. Chapter 514B, Hawaii Revised Statutes, is
7 amended by adding a new section to be appropriately designated
8 and to read as follows:

9 "§514B- Hearings. (a) If a dispute is not resolved by
10 mediation as provided in section 514B-161, in addition to any
11 other legal remedies that may be available, any party that
12 participated in the mediation may file a request for a hearing
13 with the office of administrative hearings, department of
14 commerce and consumer affairs, as follows:

15 (1) The party requesting the hearing shall be a board of
16 directors of a duly registered association of
17 apartment owners, or an apartment owner that is a
18 member of a duly registered association pursuant to
19 section 514B-103;

20 (2) The request for hearing shall be filed within thirty
21 days from the final day of mediation;



1 (3) The request for hearing shall name one or more parties
2 that participated in the mediation as an adverse party
3 and identify the statutory provisions in dispute; and

4 (4) The subject matter of the hearing before the hearing
5 officer may include any matter that was the subject of
6 the mediation pursuant to section 514B-161.

7 (b) The office of administrative hearing for the
8 department of commerce and consumer affairs shall accept no more
9 than fifteen requests for hearing per fiscal year under this
10 section.

11 (c) The party requesting the hearing shall pay a filing
12 fee of \$25 to the department of commerce and consumer affairs,
13 and the failure to do so shall result in the request for hearing
14 being rejected for filing. All other parties shall file a
15 response, accompanied by a filing fee of \$25 to the department
16 of commerce and consumer affairs, within twenty days of being
17 served with the request for hearing.

18 (d) The hearings officers appointed by the director of
19 commerce and consumer affairs pursuant to section 26-9(f) shall
20 have jurisdiction to review any request for hearing filed under
21 subsection (a). The hearings officers shall have the power to
22 issue subpoenas, administer oaths, hear testimony, find facts,

1 make conclusions of law, and issue written decisions that shall
2 be final and conclusive, unless a party adversely affected by
3 the decision files an appeal in the circuit court under section
4 91-14.

5 (e) Rules of practice and procedure of the department of
6 commerce and consumer affairs shall govern all proceedings
7 brought under this section. The burden of proof, including the
8 burden of producing the evidence and the burden of persuasion,
9 shall be upon the party initiating the proceeding. Proof of a
10 matter shall be by a preponderance of the evidence.

11 (f) Hearings to review and make determinations upon any
12 requests for hearings filed under subsection (a) shall commence
13 within sixty days following the receipt of the request for
14 hearing. The hearing officer shall issue written findings of
15 fact, conclusions of law, and an order as expeditiously as
16 practicable after the hearing has been concluded.

17 (g) Each party to the hearing shall bear the party's own
18 costs, including attorney's fees, unless otherwise ordered by
19 the hearing officer.

20 (h) Any party to a proceedings under this section who is
21 aggrieved by a final decision of a hearings officer may apply
22 for judicial review of that decision pursuant to section 91-14;



1 provided that any party seeking judicial review pursuant to
2 section 91-14 shall be responsible for the costs of preparing
3 the record on appeal, including the cost of preparing the
4 transcript of the hearing.

5 (i) The department of commerce and consumer affairs may
6 adopt rules and forms, pursuant to chapter 91, to effectuate the
7 purpose of this section and to implement its provisions."

8 SECTION 3. Act 164, Session Laws of Hawaii 2004, is
9 amended by amending section 29 to read as follows:

10 "SECTION 29. The director of commerce and consumer affairs
11 shall prepare and submit to the legislature, twenty days prior
12 to the convening of the [~~2005~~] 2007 and [~~2006~~] 2008 regular
13 sessions, a report containing the director's evaluation of the
14 operation and effect of the pilot program established by this
15 part. The report shall include a summary of the requests for
16 hearing brought under the pilot program, the disposition of such
17 requests for hearing, an appraisal of the effectiveness of the
18 pilot program, and recommendations for changes, modifications,
19 or repeal of the pilot program or parts thereof with
20 accompanying reasons and data."

21 SECTION 4. The director of commerce and consumer affairs
22 shall prepare and submit to the legislature, twenty days prior



1 to the convening of the 2007 and 2008 regular sessions, a report
 2 containing the director's evaluation of the operation and effect
 3 of the pilot program established by section 1. The report shall
 4 include a summary of the requests for hearing brought under the
 5 pilot program, the disposition of such requests for hearing, an
 6 appraisal of the effectiveness of the pilot program, and
 7 recommendations for changes, modifications, or repeal of the
 8 pilot program or parts thereof with accompanying reasons and
 9 data.

10 SECTION 5. Statutory material to be repealed is bracketed
 11 and stricken. New statutory material is underscored.

12 SECTION 6. This Act shall take effect on July 1, 2006, and
 13 shall be repealed on June 30, 2008.

14

INTRODUCED BY:

Will Espero
Ramon
Anil Y. Lee
Clemente & Richman
Armani R. Thomas
Margaret Chun Leal
Numan Sakman



Report Title:

Planned Community Associations; Condominiums

Description:

(1) Provides for administrative review pilot program to resolve disputes between planned community members or with the association; (2) amends condominium property act to provide administrative review pilot program to resolve disputes between AOA and apartment owners; (3) repeals both pilot programs 06/30/08.

