



GOV. MSG. NO. 848

EXECUTIVE CHAMBERS  
HONOLULU

LINDA LINGLE  
GOVERNOR

June 27, 2008

The Honorable Colleen Hanabusa, President  
and Members of the Senate  
Twenty-Fourth State Legislature  
State Capitol, Room 409  
Honolulu, Hawaii 96813

Dear Madam President and Members of the Senate:

This is to inform you that on June 27, 2008, the following bill was signed into law:

HB3331 HD2 SD2 CD2

A BILL FOR AN ACT RELATING TO  
CONDOMINIUMS.  
(ACT 205)

Sincerely,

A handwritten signature in black ink, appearing to read "Linda Lingle".

LINDA LINGLE

# A BILL FOR AN ACT

RELATING TO CONDOMINIUMS.

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

1 SECTION 1. Section 514A-121.5, Hawaii Revised Statutes, is  
2 amended to read as follows:

3 **"§514A-121.5 Mediation; condominium management dispute**  
4 **resolution; request for hearing; hearing.** (a) If an apartment  
5 owner or the board of directors requests mediation of a dispute  
6 involving the interpretation or enforcement of the association of  
7 apartment owners' declaration, bylaws, [~~o~~] house rules, or a  
8 matter involving section 514A-82(b)(1) to (13), 514A-82.1,  
9 514A-82.15, 514A-82.3, 514A-82.5, 514A-82.6, 514A-83, 514A-83.1,  
10 514A-83.2, 514A-83.3, 514A-83.4, 514A-83.5, 514A-84, 514A-84.5, or  
11 514A-92.5, the other party in the dispute shall be required to  
12 participate in mediation. Each party shall be wholly responsible  
13 for its own costs of participating in mediation[+], unless at the  
14 end of the mediation process, both parties agree that one party  
15 shall pay all or a specified portion of the mediation costs. If  
16 an apartment owner or the board of directors refuses to  
17 participate in the mediation of a particular dispute, a court may



1 take this refusal into consideration when awarding expenses,  
2 costs, and attorney's fees.

3 (b) If a dispute is not resolved by mediation as provided in  
4 this section, including for the reason that a unit owner or the  
5 board of directors refuses to participate in the mediation of a  
6 particular dispute, any party to that proposed or terminated  
7 mediation may file for arbitration no sooner than thirty days from  
8 the termination date of the mediation; provided that the  
9 termination date shall be deemed to be the earlier of:

10 (1) The last date the parties all met in person with the  
11 mediator;

12 (2) The date that a unit owner or a board of directors  
13 refuses in writing to mediate a particular dispute; or

14 (3) Thirty days after a unit owner or a board of directors  
15 receives a written or oral request to engage in  
16 mediation and mediation does not occur within fifty-  
17 one days after the date of the request.

18 ~~[(b)]~~ (c) If a dispute is not resolved by mediation as  
19 provided in subsection (a), ~~[in addition to any other legal~~  
20 ~~remedies that may be available,~~ including for the reason that a  
21 unit owner or the board of directors refuses to participate in the  
22 mediation of a particular dispute, any party to that ~~[participated~~



1 ~~in the]~~ proposed or terminated mediation may file a request for a  
2 hearing with the office of administrative hearings, department of  
3 commerce and consumer affairs, as follows:

4 (1) The party requesting the hearing [~~must~~] shall be a  
5 board of directors of a duly registered association of  
6 apartment owners, or an apartment owner that is a  
7 member of [~~a duly registered~~] an association[+] duly  
8 registered pursuant to section 514A-95.1;

9 (2) The request for hearing [~~must~~] shall be filed within  
10 thirty days from the [~~final day of mediation;~~]  
11 termination date as specified in writing by the  
12 mediation service; provided that the termination date  
13 shall be deemed to be the earlier of:

14 (A) The last date the parties all met in person with  
15 the mediator;

16 (B) The date that a unit owner or a board of  
17 directors refuses in writing to mediate a  
18 particular dispute; or

19 (C) Thirty days after a unit owner or a board of  
20 directors receives a written or oral request to  
21 engage in mediation and mediation does not occur



1                   within fifty-one days after the date of the  
2                   request;

3           (3) The request for hearing [~~must~~] shall name one or more  
4           parties [~~that participated~~] in the proposed or  
5           terminated mediation as an adverse party and identify  
6           the statutory provisions in dispute; and

7           (4) The subject matter of the hearing before the [~~hearing~~]  
8           hearings officer may include any matter that was the  
9           subject of the mediation pursuant to subsection (a).

10          [~~(e)~~] (d) For purposes of this section, the office of  
11          administrative [~~hearing~~] hearings for the department of commerce  
12          and consumer affairs shall accept no more than thirty requests for  
13          hearing per fiscal year under this section.

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

21          [~~(e)~~] (f) The hearings officers appointed by the director of  
22          commerce and consumer affairs pursuant to section 26-9(f) shall



1 have jurisdiction to review any request for hearing filed under  
2 subsection ~~[(b)]~~ (c). The hearings officers shall have the power  
3 to issue subpoenas, administer oaths, hear testimony, find facts,  
4 make conclusions of law, and issue written decisions that shall be  
5 final and conclusive, unless a party adversely affected by the  
6 decision files an appeal in the circuit court under section 91-14.

7 ~~[(f)]~~ (g) Chapter 16-201, Hawaii Administrative Rules, shall  
8 govern all proceedings brought under ~~[this section.]~~ subsection  
9 (c). The burden of proof, including the burden of producing the  
10 evidence and the burden of persuasion, shall be upon the party  
11 initiating the proceeding. Proof of a matter shall be by a  
12 preponderance of the evidence.

13 ~~[(g)]~~ (h) Hearings to review and make determinations upon  
14 any requests for hearings filed under subsection ~~[(b)]~~ (c) shall  
15 commence within sixty days following the receipt of the request  
16 for hearing. The ~~[hearing]~~ hearings officer shall issue written  
17 findings of fact, conclusions of law, and an order as  
18 expeditiously as practicable after the hearing has been concluded.

19 ~~[(h)]~~ (i) Each party to the hearing shall bear the party's  
20 own costs, including attorney's fees, unless otherwise ordered by  
21 the ~~[hearing]~~ hearings officer.



1           ~~[(i)]~~ (j) Any party to a ~~[proceedings under this section]~~  
2 proceeding brought under subsection (c) who is aggrieved by a  
3 final decision of a hearings officer may apply for judicial review  
4 of that decision pursuant to section 91-14; provided that any  
5 party seeking judicial review pursuant to section 91-14 shall be  
6 responsible for the costs of preparing the record on appeal,  
7 including the cost of preparing the transcript of the hearing.

8           ~~[(j)]~~ (k) The department of commerce and consumer affairs  
9 may adopt rules and forms, pursuant to chapter 91, to effectuate  
10 the purpose of this section and to implement its provisions."

11           SECTION 2. Section 514B-161, Hawaii Revised Statutes, is  
12 amended to read as follows:

13           "**§514B-161 Mediation~~[-]~~; condominium management dispute**  
14 **resolution; request for hearing; hearing.** (a) If [~~an~~  
15 ~~apartment]~~ a unit owner or the board of directors requests  
16 mediation of a dispute involving the interpretation or  
17 enforcement of the [~~association of apartment owners<sup>1</sup>~~]  
18 association's declaration, bylaws, or house rules, or a matter  
19 involving part VI, the other party in the dispute shall be  
20 required to participate in mediation. Each party shall be  
21 wholly responsible for its own costs of participating in  
22 mediation, unless at the end of the mediation process, both



1 parties agree that one party shall pay all or a specified  
2 portion of the mediation costs. If a [party] unit owner or the  
3 board of directors refuses to participate in the mediation of a  
4 particular dispute, a court may take this refusal into  
5 consideration when awarding expenses, costs, and attorneys'  
6 fees.

7 (b) Nothing in subsection (a) shall be interpreted to  
8 mandate the mediation of any dispute involving:

- 9 (1) Actions seeking equitable relief involving threatened  
10 property damage or the health or safety of association  
11 members or any other person;
- 12 (2) Actions to collect assessments;
- 13 (3) Personal injury claims; or
- 14 (4) Actions against an association, a board, or one or  
15 more directors, officers, agents, employees, or other  
16 persons for amounts in excess of \$2,500 if insurance  
17 coverage under a policy of insurance procured by the  
18 association or its board would be unavailable for  
19 defense or judgment because mediation was pursued.

20 (c) If any mediation under this section is not completed  
21 within two months from commencement, no further mediation shall  
22 be required unless agreed to by the parties.





1        (d) If a dispute is not resolved by mediation as provided in  
2 this section, including for the reason that a unit owner or the  
3 board of directors refuses to participate in the mediation of a  
4 particular dispute, any party to that proposed or terminated  
5 mediation may file for arbitration no sooner than thirty days from  
6 the termination date of the mediation; provided that the  
7 termination date shall be deemed to be the earlier of:

8        (1) The last date the parties all met in person with the  
9 mediator;

10       (2) The date that a unit owner or a board of directors  
11 refuses in writing to mediate a particular dispute; or

12       (3) Thirty days after a unit owner or a board of directors  
13 receives a written or oral request to engage in  
14 mediation and mediation does not occur within fifty-  
15 one days after the date of the request.

16       (e) If a dispute is not resolved by mediation as provided in  
17 subsection (a), including for the reason that a unit owner or the  
18 board of directors refuses to participate in the mediation of a  
19 particular dispute, any party to that proposed or terminated  
20 mediation may file a request for a hearing with the office of  
21 administrative hearings of the department of commerce and consumer  
22 affairs, as follows:



- 1        (1) The party requesting the hearing shall be a board of  
2                    directors of a duly registered association or a unit  
3                    owner that is a member of a duly registered  
4                    association pursuant to section 514B-103;
- 5        (2) The request for hearing shall be filed within thirty  
6                    days from the termination date as specified in writing  
7                    by the mediator; provided that the termination date  
8                    shall be deemed to be the earlier of:
- 9                    (A) The last date the parties all met in person with  
10                    the mediator;
- 11                    (B) The date that a unit owner or a board of  
12                    directors refuses in writing to mediate a  
13                    particular dispute; or
- 14                    (C) Thirty days after a unit owner or a board of  
15                    directors receives a written or oral request to  
16                    engage in mediation and mediation does not occur  
17                    within fifty-one days after the date of the  
18                    request;
- 19        (3) The request for hearing shall name one or more parties  
20                    in the proposed or terminated mediation as an adverse  
21                    party and identify the statutory provisions in  
22                    dispute; and



1       (4) The subject matter of the hearing before the hearings  
2       officer may include any matter that was the subject of  
3       the mediation pursuant to subsection (a); provided  
4       that if mediation does not first occur, the subject  
5       matter hearings officer shall include any matter that  
6       was identified in the request for mediation.

7       (f) For purposes of this section, the office of  
8       administrative hearings of the department of commerce and consumer  
9       affairs shall accept no more than thirty requests for hearing per  
10      fiscal year under this section.

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

18      (h) 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 (e). 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 be  
2 final and conclusive, unless a party adversely affected by the  
3 decision files an appeal in the circuit court under section 91-14.

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

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

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

19 (l) Any party to a proceeding brought under subsection (e)  
20 who is aggrieved by a final decision of a hearings officer may  
21 apply for judicial review of that decision pursuant to section 91-  
22 14; provided that any party seeking judicial review pursuant to



1 section 91-14 shall be responsible for the costs of preparing the  
2 record on appeal, including the cost of preparing the transcript  
3 of the hearing.

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

7 SECTION 3. This Act does not affect rights and duties that  
8 matured, penalties that were incurred, and proceedings that were  
9 begun, before its effective date.

10 SECTION 4. Statutory material to be repealed is bracketed  
11 and stricken. New statutory material is underscored.

12 SECTION 5. This Act shall take effect upon its approval,  
13 and shall be repealed on June 30, 2009.

APPROVED this 27 day of JUN , 2008



GOVERNOR OF THE STATE OF HAWAII

