
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, ~~[or]~~ 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~~+] termination
11 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 [~~(d)~~] (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 [~~(e)~~] (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 [~~(f)~~] (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']~~
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.



Report Title:

Condominiums; Mediation

Description:

Specifies dispute resolution parameters related to the interpretation or enforcement of a condominium association's bylaws, house rules, or certain other matters. Allows parties whose dispute is not resolved by mediation to file for arbitration or a hearing by the Department of Commerce and Consumer Affairs no sooner than 30 days from the termination date of mediation. Makes more widely available the option for an administrative hearing. Sunsets 6/30/2009. (HB3331 CD2)

