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# 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, 514A-  
9 82.15, 514A-82.3, 514A-82.5, 514A-82.6, 514A-83, 514A-83.1, 514A-  
10 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 end  
14 of the mediation process, both parties agree that one party shall  
15 pay all or a specified portion of the mediation costs. If an  
16 apartment owner or the board of directors refuses to participate  
17 in the mediation of a particular dispute, a court may take this



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

3 For the purposes of this subsection, participation in  
4 mediation is deemed to have occurred when a party receives written  
5 notice of the mediation proceedings from the mediator, whether or  
6 not it chooses to attend the mediation. The mediation service  
7 shall notify the parties in writing of the disposition of the  
8 mediation, and shall specify the termination date thereof.

9 (b) If a dispute is not resolved by mediation as provided in  
10 this section, any party to that mediation may file for arbitration  
11 no sooner than thirty days from the termination date of the  
12 mediation.

13 ~~[(b)]~~ (c) If a dispute is not resolved by mediation as  
14 provided in subsection (a), ~~[in addition to any other legal~~  
15 ~~remedies that may be available,]~~ any party to that ~~[participated~~  
16 ~~in the]~~ mediation may file a request for a hearing with the office  
17 of administrative hearings, department of commerce and consumer  
18 affairs, as follows:

19 (1) The party requesting the hearing must be a board of  
20 directors of a duly registered association of  
21 apartment owners, or an apartment owner that is a



1 member of a duly registered association~~[+]~~ pursuant to  
2 section 514A-95.1;

3 (2) The request for hearing must be filed within thirty  
4 days from the ~~[final day of mediation+]~~ termination  
5 date as specified in writing by the mediator;

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

10 (4) The subject matter of the hearing before the hearing  
11 officer may include any matter that was the subject of  
12 the mediation pursuant to subsection (a).

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

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



1 commerce and consumer affairs, within twenty days of being served  
2 with the request for hearing.

3       ~~(e)~~ (f) The hearings officers appointed by the director of  
4 commerce and consumer affairs pursuant to section 26-9(f) shall  
5 have jurisdiction to review any request for hearing filed under  
6 subsection (b). The hearings officers shall have the power to  
7 issue subpoenas, administer oaths, hear testimony, find facts,  
8 make conclusions of law, and issue written decisions that shall be  
9 final and conclusive, unless a party adversely affected by the  
10 decision files an appeal in the circuit court under section 91-14.

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

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



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

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

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

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

16        **§514B-161 Mediation~~[-]~~; condominium management dispute**  
17 **resolution; request for hearing; hearing.** (a) If [~~an~~  
18 ~~apartment~~] a unit owner or the board of directors requests  
19 mediation of a dispute involving the interpretation or  
20 enforcement of the [~~association of apartment owners'~~]  
21 association's declaration, bylaws, or house rules, or a matter  
22 involving part IV, the other party in the dispute shall be



1 required to participate in mediation. Each party shall be  
2 wholly responsible for its own costs of participating in  
3 mediation~~[7]~~; unless at the end of the mediation process, both  
4 parties agree that one party shall pay all or a specified  
5 portion of the mediation costs. If a [party] unit owner or the  
6 board of directors refuses to participate in the mediation of a  
7 particular dispute, a court may take this refusal into  
8 consideration when awarding expenses, costs, and attorneys'  
9 fees.

10 For the purposes of this subsection, participation in  
11 mediation is deemed to have occurred when a party receives written  
12 notice of the mediation proceedings from the mediator, whether or  
13 not it chooses to attend the mediation. The mediator or mediation  
14 service shall notify the parties in writing of the disposition of  
15 the mediation, and shall specify the termination date thereof.

16 ~~(b) Nothing in subsection (a) shall be interpreted to~~  
17 ~~mandate the mediation of any dispute involving:~~

18 ~~(1) Actions seeking equitable relief involving threatened~~  
19 ~~property damage or the health or safety of association~~  
20 ~~members or any other person;~~

21 ~~(2) Actions to collect assessments;~~

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



1       ~~(4) Actions against an association, a board, or one or~~  
2       ~~more directors, officers, agents, employees, or other~~  
3       ~~persons for amounts in excess of \$2,500 if insurance~~  
4       ~~coverage under a policy of insurance procured by the~~  
5       ~~association or its board would be unavailable for~~  
6       ~~defense or judgment because mediation was pursued.~~

7       (b) If a dispute is not resolved by mediation as provided in  
8       this section, any party to that mediation may file for arbitration  
9       no sooner than thirty days from the termination date of the  
10       mediation.

11       ~~(e) If any mediation under this section is not completed~~  
12       ~~within two months from commencement, no further mediation shall~~  
13       ~~be required unless agreed to by the parties.~~

14       (c) If a dispute is not resolved by mediation as provided in  
15       subsection (a), any party to that mediation may file a request for  
16       a hearing with the office of administrative hearings of the  
17       department of commerce and consumer affairs, as follows:

18       (1) The party requesting the hearing shall be a board of  
19       directors of a duly registered association or a unit  
20       owner that is a member of a duly registered  
21       association pursuant to section 514B-103;



1       (2) The request for hearing shall be filed within thirty  
2       days from the termination date as specified in writing  
3       by the mediator;

4       (3) The request for hearing shall name one or more parties  
5       in the mediation as an adverse party and identify the  
6       statutory provisions in dispute; and

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

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

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

21       (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). The hearings officers shall have the power to  
3 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 (g) The department of commerce and consumer affairs rules of  
8 practice and procedure shall govern all proceedings brought under  
9 this section. The burden of proof, including the burden of  
10 producing the evidence and the burden of persuasion, shall be upon  
11 the party initiating the proceeding. Proof of a matter shall be  
12 by a preponderance of the evidence.

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

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



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

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

11        SECTION 3. This Act shall take effect upon its approval;  
12 provided that the amendment to section 514A-121.5(b) in section  
13 2 of this Act shall be repealed on June 30, 2009, pursuant to  
14 section 12, Act 244, Session Laws of Hawaii 2007.



**Report Title:**

Condominiums; Mediation

**Description:**

Specifies matters that are subject to mediation. Permits unsatisfied parties to mediation to pursue arbitration after 30 days. (HB3331 HD1)

