

JAN 24 2007

A BILL FOR AN ACT

RELATING TO CONDOMINIUM MANAGEMENT DISPUTE RESOLUTION.

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

1 SECTION 1. Chapter 514A, Hawaii Revised Statutes, is
2 amended by adding a new section to be appropriately designated
3 and to read as follows:
4 "§514A- Mediation; condominium management dispute
5 resolution; request for hearing; hearing. (a) If an apartment
6 owner or the board of directors requests mediation of a dispute
7 involving the interpretation or enforcement of the association
8 of apartment owners' declaration, bylaws, or house rules, the
9 other party in the dispute shall be required to participate in
10 mediation. Each party shall be wholly responsible for its own
11 costs of participating in mediation; unless at the end of the
12 mediation process, both parties agree that one party shall pay
13 all or a specified portion of the mediation costs. If an
14 apartment owner or the board of directors refuses to participate
15 in the mediation of a particular dispute, a court may take this
16 refusal into consideration when awarding expenses, costs, and
17 attorney's fees.



1 (b) If a dispute is not resolved by mediation as provided
2 in subsection (a), in addition to any other legal remedies that
3 may be available, any party that participated in the mediation
4 may file a request for a hearing with the office of
5 administrative hearings, department of commerce and consumer
6 affairs, as follows:

- 7 (1) The party requesting the hearing must be a board of
8 directors of a duly registered association of
9 apartment owners, or an apartment owner that is a
10 member of a duly registered association;
- 11 (2) The request for hearing must be filed within thirty
12 days from the final day of mediation;
- 13 (3) The request for hearing must name one or more parties
14 that participated in the mediation as an adverse party
15 and identify the statutory provisions in dispute; and
- 16 (4) The subject matter of the hearing before the hearing
17 officer may include any matter that was the subject of
18 the mediation pursuant to subsection (a).

19 (c) For purposes of the pilot program, the office of
20 administrative hearing for the department of commerce and
21 consumer affairs shall accept no more than thirty requests for
22 hearing per fiscal year under this section.



1 (d) The party requesting the hearing shall pay a filing
2 fee of \$25 to the department of commerce and consumer affairs,
3 and the failure to do so shall result in the request for hearing
4 being rejected for filing. All other parties shall file a
5 response, accompanied by a filing fee of \$25 to the department
6 of commerce and consumer affairs, within twenty days of being
7 served with the request for hearing.

8 (e) The hearings officers appointed by the director of
9 commerce and consumer affairs pursuant to section 26-9(f) shall
10 have jurisdiction to review any request for hearing filed under
11 subsection (b). The hearings officers shall have the power to
12 issue subpoenas, administer oaths, hear testimony, find facts,
13 make conclusions of law, and issue written decisions that shall
14 be final and conclusive, unless a party adversely affected by
15 the decision files an appeal in the circuit court under section
16 91-14.

17 (f) Chapter 16-201, Hawaii Administrative Rules, shall
18 govern all proceedings brought under this section. The burden
19 of proof, including the burden of producing the evidence and the
20 burden of persuasion, shall be upon the party initiating the
21 proceeding. Proof of a matter shall be by a preponderance of
22 the evidence.



1 (g) Hearings to review and make determinations upon any
2 requests for hearings filed under subsection (b) shall commence
3 within sixty days following the receipt of the request for
4 hearing. The hearing officer shall issue written findings of
5 fact, conclusions of law, and an order as expeditiously as
6 practicable after the hearing has been concluded.

7 (h) Each party to the hearing shall bear the party's own
8 costs, including attorney's fees, unless otherwise ordered by
9 the hearing officer.

10 (i) Any party to a proceeding under this section who is
11 aggrieved by a final decision of a hearings officer may apply
12 for judicial review of that decision pursuant to section 91-14;
13 provided that any party seeking judicial review pursuant to
14 section 91-14 shall be responsible for the costs of preparing
15 the record on appeal, including the cost of preparing the
16 transcript of the hearing.

17 (j) The department of commerce and consumer affairs may
18 adopt rules and forms, pursuant to chapter 91, to effectuate the
19 purpose of this section and to implement its provisions."

20 SECTION 2. New statutory material is underscored.



1 SECTION 3. This Act shall take effect upon its approval.

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Report Title:

Condominium Management Dispute Resolution

Description:

Establishes requirements for condominium management dispute resolution.

