

JAN 22 2008

S.B. NO. 2889

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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. Chapter 514B, Hawaii Revised Statutes, is  
2 amended by adding a new section to be appropriately designated  
3 and to read as follows:  
4 "§514B- Mediation; condominium management dispute  
5 resolution; request for hearing; hearing. (a) If a unit owner  
6 or the board of directors requests mediation of a dispute  
7 involving the interpretation or enforcement of the association's  
8 declaration, bylaws, house rules, or a matter involving part IV,  
9 the other party in the dispute shall be required to participate in  
10 the 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 all  
13 or a specified portion of the mediation costs. If a unit owner or  
14 the board of directors refuses to participate in the mediation of  
15 a particular dispute, a court may take this refusal into  
16 consideration when awarding expenses, costs, and attorney's fees.

17 For the purposes of this subsection, participation in  
18 mediation is deemed to have occurred when a party receives written



1 notice of the mediation proceedings from the mediator, whether or  
2 not it chooses to attend the mediation. The mediator or mediation  
3 service shall notify the parties in writing of the disposition of  
4 the mediation, and shall specify the termination date thereof.

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

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

13 (1) The party requesting the hearing shall be a board of  
14 directors of a duly registered association or a unit  
15 owner that is a member of a duly registered  
16 association pursuant to section 514B-103;

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

20 (3) The request for hearing shall name one or more parties  
21 in the mediation as an adverse party and identify the  
22 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 subsection (a).

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

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

15       (f) 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 (b). 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 be  
21       final and conclusive, unless a party adversely affected by the  
22       decision files an appeal in the circuit court under section 91-14.



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

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

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

16        (j) Any party to a proceedings under this section who is  
17 aggrieved by a final decision of a hearings officer may apply for  
18 judicial review of that decision pursuant to section 91-14;  
19 provided that any party seeking judicial review pursuant to  
20 section 91-14 shall be responsible for the costs of preparing the  
21 record on appeal, including the cost of preparing the transcript  
22 of the hearing.



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

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

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

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

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

17       (1) The party requesting the hearing must be a board of  
18 directors of a duly registered association of  
19 apartment owners, or an apartment owner that is a  
20 member of a duly registered association~~[+]~~ pursuant to  
21 section 514A-95.1;



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

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

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

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

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



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

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

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







1 ~~participating in mediation, unless both parties agree that one~~  
2 ~~party shall pay all or a specified portion of the mediation~~  
3 ~~costs. If a party 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 SECTION 4. This Act shall take effect upon its approval;  
2 provided that the amendment to section 514A-121.5(b) in section  
3 2 of this Act shall not be repealed on June 30, 2009, pursuant  
4 to section 12, Act 244, Session Laws of Hawaii 2007.

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INTRODUCED BY:

Will Espero  
Carol Fukumasa  
David Nye  
Randy de Bel  
Imahee L. Iwama



**Report Title:**

Condominiums; Mediation

**Description:**

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

