

JAN 20 2010

A BILL FOR AN ACT

RELATING TO CONDOMINIUMS.

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

1 SECTION 1. Section 514A-94, Hawaii Revised Statutes, is
2 amended by amending subsection (b) to read as follows:

3 " (b) If any claim by an owner is substantiated in any action
4 against an association, any of its officers or directors, [~~or~~] its
5 board of directors, or a managing agent to enforce any provision
6 of the declaration, bylaws, house rules, or this chapter, then all
7 reasonable and necessary expenses, costs, and attorneys' fees
8 incurred by an owner shall be awarded to [~~such~~] the owner;
9 provided that no [~~such~~] award shall be made in any derivative
10 action unless:

- 11 (1) The owner first shall have demanded and allowed
12 reasonable time for the board of directors to pursue
13 [~~such~~] the enforcement; or
14 (2) The owner demonstrates to the satisfaction of the court
15 that a demand for enforcement made to the board of
16 directors would have been fruitless.



1 If any claim by an owner is not substantiated in any court
2 action against an association, any of its officers or directors,
3 [~~e~~] its board of directors, or a managing agent to enforce any
4 provision of the declaration, bylaws, house rules, or this
5 chapter, then all reasonable and necessary expenses, costs, and
6 attorneys' fees incurred by an association shall be awarded to the
7 association, unless the action was filed in small claims court or
8 prior to filing the action in a higher court the owner has first
9 submitted the claim to mediation[~~r~~] or [~~t~~] arbitration under part
10 VII of this chapter, and has made a good faith effort to resolve
11 the dispute under any of those procedures."

12 SECTION 2. Section 514A-127, Hawaii Revised Statutes, is
13 amended by amending subsection (d) to read as follows:

14 "(d) In any trial de novo demanded under subsection (b), if
15 the party demanding a trial de novo does not prevail at trial, the
16 party demanding the trial de novo shall be charged with all
17 reasonable costs, expenses, and attorneys' fees of the trial[~~r~~] in
18 accordance with section 514A-94. When there is more than one
19 party on one or both sides of an action, or more than one issue in
20 dispute, the court shall allocate its award of costs, expenses,
21 and attorneys' fees among the prevailing parties and tax such fees



1 against those nonprevailing parties who demanded a trial de novo
2 in accordance with the principles of equity."

3 SECTION 3. Section 514B-157, Hawaii Revised Statutes, is
4 amended by amending subsection (b) to read as follows:

5 "(b) If any claim by an owner is substantiated in any
6 action against an association, any of its officers or directors,
7 [~~or~~] its board, or a managing agent to enforce any provision of
8 the declaration, bylaws, house rules, or this chapter, then all
9 reasonable and necessary expenses, costs, and attorneys' fees
10 incurred by an owner shall be awarded to [~~such~~] the owner;
11 provided that no [~~such~~] award shall be made in any derivative
12 action unless:

- 13 (1) The owner first shall have demanded and allowed
14 reasonable time for the board to pursue [~~such~~] the
15 enforcement; or
- 16 (2) The owner demonstrates to the satisfaction of the
17 court that a demand for enforcement made to the board
18 would have been fruitless.

19 If any claim by an owner is not substantiated in any court
20 action against an association, any of its officers or directors,
21 [~~or~~] its board, or a managing agent to enforce any provision of
22 the declaration, bylaws, house rules, or this chapter, then all



1 reasonable and necessary expenses, costs, and attorneys' fees
2 incurred by an association shall be awarded to the association,
3 unless before filing the action in court the owner has first
4 submitted the claim to mediation[~~r~~] or [~~te~~] arbitration under
5 subpart D, and has made a good faith effort to resolve the
6 dispute under any of those procedures."

7 SECTION 4. Section 514B-163, Hawaii Revised Statutes, is
8 amended by amending subsection (d) to read as follows:

9 "(d) In any trial de novo demanded under this section, if
10 the party demanding a trial de novo does not prevail at trial,
11 the party demanding the trial de novo shall be charged with all
12 reasonable costs, expenses, and attorneys' fees of the trial[~~r~~]
13 in accordance with section 514B-157. When there is more than
14 one party on one or both sides of an action, or more than one
15 issue in dispute, the court shall allocate its award of costs,
16 expenses, and attorneys' fees among the prevailing parties and
17 tax such fees against those nonprevailing parties who demanded a
18 trial de novo in accordance with the principles of equity."

19 SECTION 5. This Act does not affect rights and duties that
20 matured, penalties that were incurred, and proceedings that were
21 begun before its effective date.

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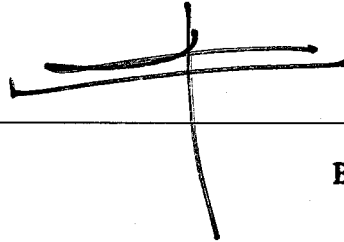


1 SECTION 6. Statutory material to be repealed is bracketed
2 and stricken. New statutory material is underscored.

3 SECTION 7. This Act shall take effect on July 1, 2010.

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INTRODUCED BY: _____

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By Request



Report Title:

Condominiums; Enforcement; Civil Actions

Description:

Clarifies that in a civil action by an apartment owner against an association, its officers or directors, its board, or a managing agent, the prevailing party shall be entitled to collect reasonable costs and expenses, including attorneys' fees.

The summary description of legislation appearing on this page is for informational purposes only and is not legislation or evidence of legislative intent.

