

JAN 23 2009

A BILL FOR AN ACT

RELATING TO ATTORNEYS' FEES.

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

1 SECTION 1. Section 514B-157, 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
4 action against an association, any of its officers or directors,
5 or its board to enforce any provision of the declaration,
6 bylaws, house rules, or this chapter, then all reasonable and
7 necessary expenses, costs, and attorneys' fees incurred by an
8 owner shall be awarded to [~~such~~] the owner; provided that no
9 [~~such~~] award shall be made in any derivative action unless:

10 (1) The owner first shall have demanded and allowed
11 reasonable time for the board to pursue [~~such~~]
12 enforcement; or

13 (2) The owner demonstrates to the satisfaction of the
14 court that a demand for enforcement made to the board
15 would have been fruitless.

16 If any claim by an owner is not substantiated in any court
17 action against an association, any of its officers or directors,



1 or its board to enforce any provision of the declaration,
2 bylaws, house rules, or this chapter, then all reasonable and
3 necessary expenses, costs, and attorneys' fees incurred by an
4 association shall be awarded to the association, unless before
5 filing the action in court the owner has first submitted the
6 claim to mediation, or to arbitration under subpart D, and made
7 a good faith effort to resolve the dispute under any of those
8 procedures.

9 Section 607-14 shall not apply to this subsection."

10 SECTION 2. Section 607-14, Hawaii Revised Statutes, is
11 amended to read as follows:

12 **"§607-14 Attorneys' fees in actions in the nature of**
13 **assumpsit, etc. (a)** In all the courts, in all actions in the
14 nature of assumpsit and in all actions on a promissory note or
15 other contract in writing that provides for an attorney's fee,
16 there shall be taxed as attorneys' fees, to be paid by the
17 losing party and to be included in the sum for which execution
18 may issue, a fee that the court determines to be reasonable;
19 provided that the attorney representing the prevailing party
20 shall submit to the court an affidavit stating the amount of
21 time the attorney spent on the action and the amount of time the
22 attorney is likely to spend to obtain a final written judgment,



1 or, if the fee is not based on an hourly rate, the amount of the
2 agreed upon fee. The court shall then tax attorneys' fees [~~7~~
3 ~~which~~] that the court determines to be reasonable, to be paid by
4 the losing party; provided that this amount shall not exceed
5 twenty-five per cent of the judgment.

6 (b) Where the note or other contract in writing provides
7 for a fee of twenty-five per cent or more, or provides for a
8 reasonable attorney's fee, not more than twenty-five per cent
9 shall be allowed.

10 (c) Where the note or other contract in writing provides
11 for a rate less than twenty-five per cent, not more than the
12 specified rate shall be allowed.

13 (d) Where the note or other contract in writing provides
14 for the recovery of attorneys' fees incurred in connection with
15 a prior debt, those attorneys' fees shall not be allowed in the
16 immediate action unless there was a writing authorizing those
17 attorneys' fees before the prior debt was incurred. "Prior
18 debt" for the purposes of this section is the principal amount
19 of a debt not included in the immediate action.

20 (e) The [~~above~~] fees provided for by this section shall be
21 assessed on the amount of the judgment exclusive of costs and



1 all attorneys' fees obtained by the plaintiff, and upon the
2 amount sued for if the defendant obtains judgment.

3 (f) Nothing in this section shall limit the recovery of
4 reasonable attorneys' fees and costs by a planned community
5 association and its members in actions for the collection of
6 delinquent assessments, the foreclosure of any lien, or the
7 enforcement of any provision of the association's governing
8 documents, or affect any right of a prevailing party to recover
9 attorneys' fees in excess of twenty-five per cent of the
10 judgment pursuant to any statute that specifically provides that
11 a prevailing party may recover all of its reasonable attorneys'
12 fees. "Planned community association" for the purposes of this
13 section means a nonprofit homeowners or community association
14 existing pursuant to covenants running with the land.

15 (g) This section shall not apply to a claim for attorneys'
16 fees in actions under section 514B-157(b) incurred by an owner
17 of a condominium for any common law tort, breach of fiduciary
18 duty, or statutory cause of action, including but not limited
19 to, claims under chapter 480, brought by the owner against the
20 association, any of its officers or directors, or its board to
21 enforce any provision of the declaration, bylaws, house rules,
22 or chapter 514B."



S.B. NO. 573

1 SECTION 3. Statutory material to be repealed is bracketed
2 and stricken. New statutory material is underscored.

3 SECTION 4. This Act shall take effect upon its approval.

4

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Report Title:

Attorneys' Fees; Condominiums; Association

Description:

Clarifies that Hawaii law relating to the recovery of attorneys' fees in actions in the nature of assumpsit does not apply to common law tort, breach of fiduciary duty, and statutory causes of actions brought by a condominium unit owner against an association.

