

JAN 21 2011

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# A BILL FOR AN ACT

RELATING TO CONDOMINIUM DISPUTE RESOLUTION.

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

1           SECTION 1. The legislature finds that disputes within  
2 condominium communities arise from many causes and multiple  
3 forums for dispute resolution will benefit both condominium  
4 associations and owners. While the courts are available to  
5 resolve conflicts, condominium law should provide incentives for  
6 the meaningful and good faith use of alternative dispute  
7 resolution mechanisms.

8           A requirement to mediate certain condominium-related  
9 disputes is an effective way to create a forum for parties in  
10 conflict to carefully consider the risks and benefits that may  
11 be associated with the exercise of other remedies such as  
12 litigation or arbitration.

13           The legislature also finds that traditional exceptions to  
14 mandatory mediation, including matters relating to the  
15 collection of assessments, actions seeking equitable relief that  
16 involve threats to persons or property, personal injury actions,  
17 and certain actions that might prejudice insurance coverage,  
18 should be preserved in order to protect essential operational



1 and governance requirements of condominiums and to protect other  
2 valuable rights.

3 The legislature also finds that the condominium education  
4 trust fund should be used to, among other things, facilitate  
5 access to mediation services.

6 SECTION 2. Chapter 514B, Hawaii Revised Statutes, is  
7 amended by adding a new section to be appropriately designated  
8 and to read as follows:

9 "§514B- Mediation. (a) Any dispute involving an owner  
10 and the association that concerns the interpretation or  
11 enforcement of the association's declaration, bylaws, or house  
12 rules or a matter involving part VI shall be submitted to  
13 mediation, except as provided in subsection (b).

14 (b) The following types of disputes shall not be submitted  
15 to mediation without the written agreement of all parties to the  
16 dispute:

- 17 (1) Matters relating to the collection of assessments;  
18 (2) Actions seeking equitable relief involving threatened  
19 property damage or the health or safety of association  
20 members or any other person;  
21 (3) Claims for personal injury; or



1       (4) Actions involving more than \$2,500 where insurance  
2           coverage for defense or indemnification under a policy  
3           of insurance procured by or for the association would  
4           be prejudiced by participation in mediation.

5       (c) An owner or the association shall have the duty to  
6       mediate in good faith all matters within the scope of subsection  
7       (a) upon receipt of a written demand for mediation by the other  
8       party to the dispute. The demand for mediation shall specify  
9       the portion or portions of the declaration, bylaws, house rules,  
10       or provisions under part VI to be interpreted or enforced and  
11       the relief sought by the party making the demand.

12       (d) The failure, neglect, or refusal of an owner or the  
13       association to agree to mediation within thirty days after  
14       receipt of a demand for mediation that complies with the  
15       requirements of subsection (c) shall be deemed to be a breach of  
16       the duty to mediate.

17       (e) The duty to mediate shall be satisfied by meeting with  
18       a mediator within sixty days after receipt of a demand for  
19       mediation that complies with the requirements of subsection (c);  
20       provided that meeting with a mediator shall not, by itself,  
21       demonstrate that mediation in good faith has occurred.



1           (f) Any breach of the duty to mediate, as described in  
2 subsections (d) and (e), may be considered by a court or by an  
3 arbitrator when ruling upon a motion for an award of reasonable  
4 attorneys' fees.

5           (g) The owner and the association each shall bear the  
6 respective fees and costs of participation in mediation under  
7 this section, unless the parties agree otherwise in writing.

8           (h) Any mediation under this section shall be conducted in  
9 the county where the condominium is located, under the authority  
10 of a non-profit entity that has contracted with the commission  
11 to provide low-cost alternative dispute resolution services,  
12 unless the parties agree otherwise in writing.

13           (i) This section shall be without prejudice to the right  
14 of any party to seek any informal interpretation from the  
15 commission pursuant to subchapter 5 of chapter 201 of title 16  
16 of the Hawaii Administrative Rules."

17           SECTION 3. Section 514B-71, Hawaii Revised Statutes, is  
18 amended by amending subsection (a) to read as follows:

19           "(a) The commission shall establish a condominium  
20 education trust fund that the commission may use for educational  
21 purposes. Educational purposes shall include financing or  
22 promoting:



- 1           (1) Education and research in the field of condominium  
2           management, condominium project registration, and real  
3           estate, for the benefit of the public and those  
4           required to be registered under this chapter;
- 5           (2) The improvement and more efficient administration of  
6           associations; and
- 7           (3) Expeditious and inexpensive procedures for resolving  
8           association disputes[-], including mediation as  
9           described in section 514B- ."

10           SECTION 4. Section 514B-73, Hawaii Revised Statutes, is  
11 amended as follows:

12           1. By amending subsection (b) to read:

13           "(b) The commission and the director of commerce and  
14 consumer affairs may use moneys in the condominium education  
15 trust fund collected pursuant to sections 514A-40, 514A-95.1,  
16 and 514B-72, and the rules of the commission to employ necessary  
17 personnel not subject to chapter 76 for additional staff  
18 support, to provide office space, and to purchase equipment,  
19 furniture, and supplies required by the commission to carry out  
20 its responsibilities under this part. The commission and the  
21 director of commerce and consumer affairs may expend up to



1 \$ \_\_\_\_\_ per year from the condominium education trust fund  
2 toward mediation services authorized under section 514B- \_\_\_\_\_."

3 2. By amending subsection (d) to read:

4 "(d) The commission shall annually submit to the  
5 legislature, no later than twenty days prior to the convening of  
6 each regular session:

7 (1) A summary of the programs funded during the prior  
8 fiscal year and the amount of money in the fund,  
9 including a statement of which programs were directed  
10 specifically at the education of condominium owners[+] and a statement of which programs were directed  
11 specifically at the development of expeditious and  
12 inexpensive procedures for resolving association  
13 disputes; and

14 (2) A copy of the budget for the current fiscal year,  
15 including summary information on programs that were  
16 funded or are to be funded and the target audience for  
17 each program. The budget shall include a line item  
18 reflecting the total amount collected from condominium  
19 associations."  
20

21 SECTION 5. Section 514B-157, Hawaii Revised Statutes, is  
22 amended to read as follows:



1 " ~~§~~514B-157 ~~§~~ Attorneys' fees, delinquent assessments,  
2 and expenses of enforcement. (a) All costs and expenses,  
3 including reasonable attorneys' fees, incurred by or on behalf  
4 of the association for:

5 (1) Collecting any delinquent assessments against any  
6 owner's unit;

7 (2) Foreclosing any lien thereon; or

8 (3) Enforcing any provision of the declaration, bylaws,  
9 house rules, and this chapter, or the rules of the  
10 real estate commission;

11 against an owner, occupant, tenant, employee of an owner, or any  
12 other person who may in any manner use the property, shall be  
13 promptly paid on demand to the association by such person or  
14 persons; provided that if the association is not the prevailing  
15 party with respect to claims upon which the association takes  
16 any court action [~~are not substantiated~~], all costs and  
17 expenses, including reasonable attorneys' fees, incurred by any  
18 such person or persons as a result of the court action [~~of~~]  
19 taken by the association, shall be promptly paid on demand to  
20 such person or persons by the association.

21 (b) If [~~any claim by~~] an owner is [~~substantiated~~] the  
22 prevailing party in any court action against an association, any



1 of its officers or directors, or its board to enforce any  
2 provision of the declaration, bylaws, house rules, or this  
3 chapter, then all reasonable and necessary expenses, costs, and  
4 attorneys' fees incurred by an owner shall be awarded to such  
5 owner; provided that no such award shall be made in any  
6 derivative action unless:

7 (1) The owner first shall have demanded and allowed  
8 reasonable time for the board to pursue such  
9 enforcement; or

10 (2) The owner demonstrates to the satisfaction of the  
11 court that a demand for enforcement made to the board  
12 would have been fruitless.

13 If [~~any claim by~~] an owner is not [~~substantiated~~] the  
14 prevailing party in any court action against an association, any  
15 of its officers or directors, or its board to enforce any  
16 provision of the declaration, bylaws, house rules, or this  
17 chapter, then all reasonable and necessary expenses, costs, and  
18 attorneys' fees incurred by [~~an~~] the association shall be  
19 awarded to the association[~~, unless before filing the action in~~  
20 ~~court the owner has first submitted the claim to mediation, or~~  
21 ~~to arbitration under subpart D, and made a good faith effort to~~  
22 ~~resolve the dispute under any of those procedures.~~]; provided





1 that, when determining the reasonableness and the necessity of  
2 expenses, costs, and attorneys' fees incurred by the  
3 association, the court may consider factors including, without  
4 limitation, the importance of the issue raised by the owner  
5 against the association, the effect of the litigation on the  
6 common fund and association operations, or any effort made by  
7 the owner to resolve the dispute, including any written  
8 settlement offer or the mediation of any matter within the scope  
9 of section 514B- ."

10 SECTION 6. Section 514B-161, Hawaii Revised Statutes, is  
11 repealed.

12 [~~"§514B-161 Mediation; condominium management dispute~~  
13 ~~resolution; request for hearing; hearing.~~ (a) If a unit owner  
14 or the board of directors requests mediation of a dispute  
15 involving the interpretation or enforcement of the association's  
16 declaration, bylaws, or house rules, or a matter involving part  
17 VI, the other party in the dispute shall be required to  
18 participate in mediation. Each party shall be wholly  
19 responsible for its own costs of participating in mediation,  
20 unless at the end of the mediation process, both parties agree  
21 that one party shall pay all or a specified portion of the  
22 mediation costs. If a unit owner or the board of directors



1 ~~refuses to participate in the mediation of a particular dispute,~~  
2 ~~a court may take this refusal into consideration when awarding~~  
3 ~~expenses, costs, and attorneys' fees.~~

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

6 ~~(1) Actions seeking equitable relief involving threatened~~  
7 ~~property damage or the health or safety of association~~  
8 ~~members or any other person;~~

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

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

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

17 ~~(c) If any mediation under this section is not completed~~  
18 ~~within two months from commencement, no further mediation shall~~  
19 ~~be required unless agreed to by the parties.~~

20 ~~(d) If a dispute is not resolved by mediation as provided in~~  
21 ~~this section, including for the reason that a unit owner or the~~  
22 ~~board of directors refuses to participate in the mediation of a~~



1 ~~particular dispute, any party to that proposed or terminated~~  
2 ~~mediation may file for arbitration no sooner than thirty days from~~  
3 ~~the termination date of the mediation; provided that the~~  
4 ~~termination date shall be deemed to be the earlier of:~~

5       ~~(1) The last date the parties all met in person with the~~  
6           ~~mediator;~~

7       ~~(2) The date that a unit owner or a board of directors~~  
8           ~~refuses in writing to mediate a particular dispute; or~~

9       ~~(3) Thirty days after a unit owner or a board of directors~~  
10           ~~receives a written or oral request to engage in~~  
11           ~~mediation and mediation does not occur within fifty-~~  
12           ~~one days after the date of the request.~~

13       ~~(c) If a dispute is not resolved by mediation as provided in~~  
14 ~~subsection (a), including for the reason that a unit owner or the~~  
15 ~~board of directors refuses to participate in the mediation of a~~  
16 ~~particular dispute, any party to that proposed or terminated~~  
17 ~~mediation may file a request for a hearing with the office of~~  
18 ~~administrative hearings of the department of commerce and consumer~~  
19 ~~affairs, as follows:~~

20       ~~(1) The party requesting the hearing shall be a board of~~  
21           ~~directors of a duly registered association or a unit~~



1           ~~owner that is a member of a duly registered~~  
2           ~~association pursuant to section 514B-103;~~  
3       ~~(2) The request for hearing shall be filed within thirty~~  
4           ~~days from the termination date as specified in writing~~  
5           ~~by the mediator; provided that the termination date~~  
6           ~~shall be deemed to be the earlier of:~~  
7           ~~(A) The last date the parties all met in person with~~  
8           ~~the mediator;~~  
9           ~~(B) The date that a unit owner or a board of~~  
10           ~~directors refuses in writing to mediate a~~  
11           ~~particular dispute; or~~  
12           ~~(C) Thirty days after a unit owner or a board of~~  
13           ~~directors receives a written or oral request to~~  
14           ~~engage in mediation and mediation does not occur~~  
15           ~~within fifty one days after the date of the~~  
16           ~~request;~~  
17       ~~(3) The request for hearing shall name one or more parties~~  
18           ~~in the proposed or terminated mediation as an adverse~~  
19           ~~party and identify the statutory provisions in~~  
20           ~~dispute; and~~  
21       ~~(4) The subject matter of the hearing before the hearings~~  
22           ~~officer may include any matter that was the subject of~~



1 ~~the mediation pursuant to subsection (a); provided~~  
2 ~~that if mediation does not first occur, the subject~~  
3 ~~matter hearings officer shall include any matter that~~  
4 ~~was identified in the request for mediation.~~

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

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

16 ~~(h) The hearings officers appointed by the director of~~  
17 ~~commerce and consumer affairs pursuant to section 26-9(f) shall~~  
18 ~~have jurisdiction to review any request for hearing filed under~~  
19 ~~subsection (c). The hearings officers shall have the power to~~  
20 ~~issue subpoenas, administer oaths, hear testimony, find facts,~~  
21 ~~make conclusions of law, and issue written decisions that shall be~~



1 ~~final and conclusive, unless a party adversely affected by the~~  
2 ~~decision files an appeal in the circuit court under section 91-14.~~

3 ~~(i) The department of commerce and consumer affairs' rules~~  
4 ~~of practice and procedure shall govern all proceedings brought~~  
5 ~~under subsection (e). The burden of proof, including the burden~~  
6 ~~of producing the evidence and the burden of persuasion, shall be~~  
7 ~~upon the party initiating the proceeding. Proof of a matter shall~~  
8 ~~be by a preponderance of the evidence.~~

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

15 ~~(k) Each party to the hearing shall bear the party's own~~  
16 ~~costs, including attorney's fees, unless otherwise ordered by the~~  
17 ~~hearings officer.~~

18 ~~(l) Any party to a proceeding brought under subsection (e)~~  
19 ~~who is aggrieved by a final decision of a hearings officer may~~  
20 ~~apply for judicial review of that decision pursuant to section 91-~~  
21 ~~14, provided that any party seeking judicial review pursuant to~~  
22 ~~section 91-14 shall be responsible for the costs of preparing the~~




1 ~~record on appeal, including the cost of preparing the transcript~~  
2 ~~of the hearing.~~

3 ~~(m) The department of commerce and consumer affairs may~~  
4 ~~adopt rules and forms, pursuant to chapter 91, to effectuate the~~  
5 ~~purpose of this section and to implement its provisions."]~~

6 SECTION 7. Statutory material to be repealed is bracketed  
7 and stricken. New statutory material is underscored.

8 SECTION 8. This Act shall take effect on July 1, 2011.

9

INTRODUCED BY: Will Eyo  




**Report Title:**

Condominium Association; Dispute Mediation; Appropriation

**Description:**

Requires certain condominium-related disputes involving an owner and the association to be submitted to mediation. Requires the real estate commission of the State to submit a summary to the legislature detailing which programs were directed at the development of expeditious and inexpensive condominium-related disputes. Repeals section 514B-161, HRS. Authorizes funds from the condominium education trust fund to be used for mediation services.

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

