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

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 Finally, the legislature finds that the current dispute  
4 resolution process that includes sequential options for  
5 mediation, arbitration, administrative hearing, and judicial  
6 review is an important process that allows condominium owners  
7 and associations to pursue several low-cost and accessible  
8 dispute resolution options in order to avoid going to court.

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

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

18 (b) The following types of disputes shall not be submitted  
19 to mediation without the written agreement of all parties to the  
20 dispute:

21 (1) Matters relating to the collection of assessments;  
22 provided that an owner who first pays the full amount



1           claimed by the association shall be entitled to  
2           exercise the remedies provided in section 514B-146(d);  
3           (2) Actions seeking equitable relief involving threatened  
4           property damage or the health or safety of association  
5           members or any other person;  
6           (3) Claims for personal injury; or  
7           (4) Actions involving more than \$2,500 where insurance  
8           coverage for defense or indemnification under a policy  
9           of insurance procured by or for the association would  
10           be prejudiced by participation in mediation.  
11           (c) An owner or the association shall have the duty to  
12           participate in mediation for all matters within the scope of  
13           subsection (a) upon receipt of a written demand for mediation by  
14           the other party to the dispute. A demand for mediation shall  
15           specify the matters to be interpreted or enforced and the relief  
16           sought by the party making the demand.  
17           (d) The failure, neglect, or refusal of an owner or the  
18           association to agree to mediation within thirty days after  
19           receipt of a demand for mediation that complies with the  
20           requirements of subsection (c) shall be deemed to be a breach of  
21           the duty to mediate.



1       (e) The duty to mediate shall be satisfied by meeting with  
2 a mediator within sixty days after receipt of a demand for  
3 mediation that complies with the requirements of subsection (c).

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

8       (g) The owner and the association each shall bear the fees  
9 and costs of participation in mediation under this section,  
10 unless the parties agree otherwise in writing.

11       (h) Any mediation under this section shall be conducted in  
12 the county where the condominium is located.

13       (i) This section shall not prejudice the right of any  
14 party to seek any informal interpretation from the commission  
15 pursuant to subchapter 5 of chapter 201 of title 16 of the  
16 Hawaii administrative rules."

17       SECTION 3. Section 514B-157, Hawaii Revised Statutes, is  
18 amended to read as follows:

19       "**[+]§514B-157[+]** **Attorneys' fees, delinquent assessments,**  
20 **and expenses of enforcement.** (a) All costs and expenses,  
21 including reasonable attorneys' fees, incurred by or on behalf  
22 of the association for:



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

3 (2) Foreclosing any lien thereon; or

4 (3) Enforcing any provision of the declaration, bylaws,  
5 house rules, and this chapter, or the rules of the  
6 real estate commission;

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

17 (b) If [~~any claim by~~] an owner is [~~substantiated~~] the  
18 prevailing party in any court action against an association, any  
19 of its officers or directors, or its board to enforce any  
20 provision of the declaration, bylaws, house rules, or this  
21 chapter, then all reasonable and necessary expenses, costs, and  
22 attorneys' fees incurred by an owner shall be awarded to [~~such~~]



1 the owner; provided that no [~~such~~] award shall be made in any  
2 derivative action unless:

- 3 (1) The owner first shall have demanded and allowed  
4 reasonable time for the board to pursue [~~such~~]  
5 enforcement; or  
6 (2) The owner demonstrates to the satisfaction of the  
7 court that a demand for enforcement made to the board  
8 would have been fruitless.

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



1 association, the effect of the litigation on the common fund and  
2 association operations, or any effort made by the owner to  
3 resolve the dispute including any written settlement offer, or  
4 the mediation of any matter within the scope of section  
5 514B- ."

6 SECTION 4. Section 514B-161, Hawaii Revised Statutes, is  
7 amended to read as follows:

8 "§514B-161 [~~Mediation; condominium~~] Condominium management  
9 dispute [resolution; request for hearing]; administrative  
10 hearing. (a) [~~If a unit owner or the board of directors~~  
11 ~~requests mediation of a dispute involving the interpretation or~~  
12 ~~enforcement of the association's declaration, bylaws, or house~~  
13 ~~rules, or a matter involving part VI, the other party in the~~  
14 ~~dispute shall be required to participate in mediation. Each~~  
15 ~~party shall be wholly responsible for its own costs of~~  
16 ~~participating in mediation, unless at the end of the mediation~~  
17 ~~process, both parties agree that one party shall pay all or a~~  
18 ~~specified portion of the mediation costs. If a unit owner or the~~  
19 ~~board of directors refuses to participate in the mediation of a~~  
20 ~~particular dispute, a court may take this refusal into~~  
21 ~~consideration when awarding expenses, costs, and attorneys'~~  
22 ~~fees.~~



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

3 ~~(1) Actions seeking equitable relief involving threatened~~  
4 ~~property damage or the health or safety of association~~  
5 ~~members or any other person;~~

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

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

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

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

17 ~~(d)]~~ If a dispute is not resolved by mediation as provided  
18 ~~[in this section,]~~ in section 514B- , including for the reason  
19 that a unit owner or the board of directors refuses to participate  
20 in the mediation of a particular dispute, any party to that  
21 proposed or terminated mediation may file for arbitration no  
22 sooner than thirty days from the termination date of the





1 mediation; provided that the termination date shall be deemed to  
2 be the earlier of:

- 3 (1) The last date the parties all [~~met~~] meet in person  
4 with the mediator;
- 5 (2) The date that a unit owner or a board of directors  
6 refuses in writing to mediate a particular dispute; or
- 7 (3) Thirty days after a unit owner or a board of directors  
8 receives a written or oral request to engage in  
9 mediation [~~and~~]; provided that mediation does not  
10 occur within fifty-one days after the date of the  
11 request.

12 [~~e~~] (b) If a dispute is not resolved by mediation as  
13 provided in [~~subsection (a),~~] section 514B- , including for the  
14 reason that a unit owner or the board of directors refuses to  
15 participate in the mediation of a particular dispute, any party to  
16 that proposed or terminated mediation may file a request for a  
17 hearing with the office of administrative hearings of the  
18 department of commerce and consumer affairs, as follows:

- 19 (1) The party requesting the hearing shall be a board of  
20 directors of a duly registered association or a unit  
21 owner that is a member of a duly registered  
22 association pursuant to section 514B-103;



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



1 occur, the subject matter [~~hearings officer~~] of the  
2 hearing shall include any matter that was identified  
3 in the request for mediation.

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

15 [~~h~~] (e) 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 [~~e~~] (b). The hearings officers shall have the power  
19 to 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           ~~[(i)]~~ (f) The department of commerce and consumer affairs'  
2 rules of practice and procedure shall govern all proceedings  
3 brought under subsection ~~[(e)-.]~~ (b). The burden of proof,  
4 including the burden of producing the evidence and the burden of  
5 persuasion, shall be upon the party initiating the proceeding.  
6 Proof of a matter shall be by a preponderance of the evidence.

7           ~~[(j)]~~ (g) Hearings to review and make determinations upon  
8 any requests for hearings filed under subsection ~~[(e)-]~~ (b) shall  
9 commence within sixty days following the receipt of the request  
10 for 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           ~~[(k)]~~ (h) Each party to the hearing shall bear the party's  
14 own costs, including attorney's fees, unless otherwise ordered by  
15 the hearings officer.

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



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

4        SECTION 5. Act 205, Session Laws of Hawaii 2008, section  
5 5, as amended by Act 9, Session Laws of Hawaii 2009, section 2,  
6 is amended to read as follows:

7        "SECTION 5. This Act shall take effect upon its approval[~~7~~  
8 ~~and shall be repealed on June 30, 2011~~]."

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

11        SECTION 7. This Act shall take effect on July 1, 2112.

12



**Report Title:**

Condominium Association; Dispute Resolution

**Description:**

Requires certain condominium-related disputes involving an owner and the association to be submitted to mediation. Effective 7/1/2112. (SD1)

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

