

**LATE**

THE SENATE  
THE TWENTY-SEVENTH LEGISLATURE  
REGULAR SESSION OF 2013

COMMITTEE ON CONSUMER PROTECTION AND COMMERCE

Senator Rosalyn H. Baker, Chair  
Senator Brickwood Galuteria, Vice Chair

Hearing Date: Friday, February 1, 2013

Time: 8:30 a.m.

Place: Conference Room 229

State Capitol

415 South Beretania Street

By: Tracey Wiltgen, Executive Director  
The Mediation Center of the Pacific, Inc.

Bill No. and Title: SB 505, Relating to Condominiums

**SUBMITTED BY E-MAIL: [testimony@capitol.hawaii.gov](mailto:testimony@capitol.hawaii.gov)**

TO THE HONORABLE ROSALYN H. BAKER, CHAIR, THE HONORABLE BRICKWOOD GALUTERIA,  
VICE CHAIR AND MEMBERS OF THE COMMITTEE:

My name is Tracey Wiltgen, Executive Director of the Mediation Center of the Pacific (the Mediation Center) and I am **writing on behalf of the Mediation Center to support SB 505.**

The Mediation Center is a 501(c)(3) not for profit corporation that was founded in 1979 to provide Hawaii's people with peaceful approaches to working through conflict. Over the years, the Mediation Center has developed processes that help participants address a broad array of issues and meet the unique needs of Hawaii's culturally diverse populations. Parties in conflict are assisted in resolving their immediate dispute, as well as in improving communication and strengthening their relationships for the future.

To achieve these positive outcomes, the Mediation Center uses a facilitative mediation process. The facilitative model is ideally suited for assisting with relationship-based disputes. It also enables the Mediation Center to cost effectively recruit and train a large number of people from diverse backgrounds to provide mediation on behalf of the Mediation Center for approximately 1,500 cases annually. While 52% of these cases result in written agreements overall, the facilitative model of mediation also has its limitations.

The facilitative mediator relies primarily on effective communication and negotiation skills to help parties reach agreement. While evaluative mediators use those skills as well, they also rely on their subject matter expertise to effectively assess the strengths and weaknesses of a case to assist the parties in moving towards a resolution. This difference in mediator styles is significant in disputes governed by complex laws.

A core quality of a successful mediator is his/her ability to develop rapport with the parties. Having subject matter expertise in the area of the dispute strengthens a mediator's credibility with the parties and ultimately his/her ability to assist them in reaching resolution. Facilitative mediators who do not have a strong grasp of the laws are not only unable to evaluate the strengths and weaknesses of each parties position, but they also may be ineffective in moving the process forward, ultimately losing the trust and confidence of the parties. Because condominiums are governed by a myriad of laws and many of the disputes involving condominiums are based on an interpretation of these laws, evaluative mediators with subject matter expertise are more likely to help the parties reach a resolution.

Since 1990, the Mediation Center has worked with the Department of Commerce and Consumer Affairs Real Estate Division, to provide mediation services for condominium matters. While the Mediation Center has successfully assisted with the resolution of many relationship based and minor disputes arising in condominium associations, parties involved in the more complex cases involving legal issues, decline to participate in mediation at the Mediation Center because evaluative mediators with subject matter expertise are not available. This fact is supported by the Mediation Center's 2012 statistics.

Last year the Mediation Center managed 58 cases involving condominium associations. 31% of the cases that participated in mediation resulted in written agreements, (a significantly lower rate of success than in other areas) and 57% of the cases were closed with no mediation because one of the parties declined. This high rate of closure is also significant because only 17% of the Mediation Center's 1600 cases overall that were opened in 2012, closed without mediation.

Mediation has grown and evolved over the past twenty years and as a result is in the forefront as a preferred process for helping parties resolve a broad array of disputes quickly and cost effectively. More condominium disputes could be successfully resolved through mediation if a subsidized program offering evaluative mediation were available. SB 505 would make this opportunity a reality.

Respectfully,



Tracey S. Wiltgen, Executive Director  
The Mediation Center of the Pacific