

JAN 18 2013

A BILL FOR AN ACT

RELATING TO CONDOMINIUMS.

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

1 SECTION 1. Section 514A-121.5, Hawaii Revised Statutes, is
2 amended to read as follows:

3 "§514A-121.5 Mediation[-]; condominium dispute resolution;
4 request for hearing; hearing. (a) If an apartment owner or the
5 board of directors requests mediation of a dispute involving the
6 interpretation or enforcement of the association of apartment
7 owners' declaration, bylaws, [e~~x~~] house rules, or a matter
8 involving section 514A-82(b)(1) to (13), 514A-82.1, 514A-82.15,
9 514A-82.3, 514A-82.5, 514A-82.6, 514A-83, 514A-83.1, 514A-83.2,
10 514A-83.3, 514A-83.4, 514A-83.5, 514A-84, 514A-84.5, or 514A-92.5,
11 the other party in the dispute shall be required to participate in
12 mediation. Each party shall be wholly responsible for its own
13 costs of participating in mediation, unless at the end of the
14 mediation process, both parties agree that one party shall pay all
15 or a specified portion of the mediation costs. If an apartment
16 owner or the board of directors refuses to participate in the
17 mediation of a particular dispute, a court may take this refusal



1 into consideration when awarding expenses, costs, and attorney's
2 fees.

3 (b) If a dispute is not resolved by mediation as provided
4 in subsection (a), including for the reason that an apartment
5 owner or the board of directors refuses to participate in the
6 mediation of a particular dispute, any party to that proposed or
7 terminated mediation may file for arbitration no sooner than
8 thirty days from the termination date of the mediation; provided
9 that the termination date shall be deemed to be the earlier of:

10 (1) The last date the parties all met in person with the
11 mediator;

12 (2) The date that an apartment owner or a board of
13 directors refuses in writing to mediate a particular
14 dispute; or

15 (3) Thirty days after an apartment owner or a board of
16 directors receives a written or oral request to engage
17 in mediation and mediation does not occur within
18 fifty-one days after the date of the request.

19 (c) If a dispute is not resolved by mediation as provided
20 in subsection (a), including for the reason that an apartment
21 owner or the board of directors refuses to participate in the
22 mediation of a particular dispute, any party to that proposed or



1 terminated mediation may file a request for a hearing with the
2 office of administrative hearings of the department of commerce
3 and consumer affairs, as follows:

4 (1) The party requesting the hearing shall be a board of
5 directors of a duly registered association of
6 apartment owners, or an apartment owner that is a
7 member of an association duly registered pursuant to
8 section 514A-95.1;

9 (2) The request for hearing shall be filed within thirty
10 days from the termination date as specified in writing
11 by the mediator; provided that the termination date
12 shall be deemed to be the earlier of:

13 (A) The last date the parties all met in person with
14 the mediator;

15 (B) The date that an apartment owner or a board of
16 directors refuses in writing to mediate a
17 particular dispute; or

18 (C) Thirty days after an apartment owner or a board
19 of directors receives a written or oral request
20 to engage in mediation and mediation does not
21 occur within fifty-one days after the date of the
22 request;



1 (3) The request for hearing shall name one or more parties
2 in the proposed or terminated mediation as an adverse
3 party and identify the statutory provisions in
4 dispute; and

5 (4) The subject matter of the hearing before the hearings
6 officer may include any matter that was the subject of
7 the mediation pursuant to subsection (a).

8 (d) For purposes of this section, the office of
9 administrative hearings of the department of commerce and
10 consumer affairs shall accept no more than thirty requests for
11 hearing per fiscal year under this section.

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

19 (f) The hearings officer appointed by the director of
20 commerce and consumer affairs pursuant to section 26-9(f) shall
21 have jurisdiction to review any request for hearing filed under
22 subsection (c). The hearings officer shall have the power to



1 issue subpoenas, administer oaths, hear testimony, find facts,
2 make conclusions of law, and issue written decisions that shall
3 be final and conclusive, unless a party adversely affected by
4 the decision files an appeal in the circuit court under section
5 91-14.

6 (g) The department of commerce and consumer affairs' rules
7 of administrative practice and procedure shall govern all
8 proceedings brought under subsection (c). The burden of proof,
9 including the burden of producing the evidence and the burden of
10 persuasion, shall be upon the party initiating the proceeding.
11 Proof of a matter shall be by a preponderance of the evidence.

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

18 (i) Each party to the hearing shall bear the party's own
19 costs, including attorney's fees, unless otherwise ordered by
20 the hearings officer.

21 (j) Any party to a proceeding brought under subsection (c)
22 who is aggrieved by a final decision of a hearings officer may



1 apply for judicial review of that decision pursuant to section
2 91-14; provided that any party seeking judicial review pursuant
3 to section 91-14 shall be responsible for the costs of preparing
4 the record on appeal, including the cost of preparing the
5 transcript of the hearing.

6 (k) The department of commerce and consumer affairs may
7 adopt rules and forms, pursuant to chapter 91, to effectuate the
8 purpose of this section and to implement its provisions."

9 SECTION 2. Section 514B-161, Hawaii Revised Statutes, is
10 amended to read as follows:

11 "§514B-161 Mediation[-]; condominium dispute resolution;
12 request for hearing; hearing. (a) If [~~an apartment~~] a unit
13 owner or the board of directors requests mediation of a dispute
14 involving the interpretation or enforcement of the [~~association~~
15 ~~of apartment owners~~] association's declaration, bylaws, or
16 house rules, or a matter involving part VI, the other party in
17 the dispute shall be required to participate in mediation. Each
18 party shall be wholly responsible for its own costs of
19 participating in mediation, unless at the end of the mediation
20 process, both parties agree that one party shall pay all or a
21 specified portion of the mediation costs. If a [~~party~~] unit
22 owner or the board of directors refuses to participate in the



1 mediation of a particular dispute, a court may take this refusal
2 into consideration when awarding expenses, costs, and attorneys'
3 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]~~ subsection (a)
18 is not completed within two months from commencement, no further
19 mediation shall be required unless agreed to by the parties.

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



1 of a particular dispute, any party to that proposed or
2 terminated mediation may file for arbitration no sooner than
3 thirty days from the termination date of the mediation; provided
4 that the 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 (e) If a dispute is not resolved by mediation as provided
14 in subsection (a), including for the reason that a unit owner or
15 the board of directors refuses to participate in the mediation
16 of a particular dispute, any party to that proposed or
17 terminated mediation may file a request for a hearing with the
18 office of administrative hearings of the department of commerce
19 and consumer 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 an association duly
2 registered 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
7 consumer affairs shall accept no more than thirty requests for
8 hearing per fiscal year under this section.

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

16 (h) The hearings officer 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 (e). The hearings officer 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
22 be final and conclusive, unless a party adversely affected by



1 the decision files an appeal in the circuit court under section
2 91-14.

3 (i) The department of commerce and consumer affairs' rules
4 of administrative practice and procedure shall govern all
5 proceedings brought under subsection (e). The burden of proof,
6 including the burden of producing the evidence and the burden of
7 persuasion, shall be upon the party initiating the proceeding.
8 Proof of a matter shall 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
17 the 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
21 91-14; provided that any party seeking judicial review pursuant
22 to section 91-14 shall be responsible for the costs of preparing



1 the record on appeal, including the cost of preparing the
2 transcript 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 3. Statutory material to be repealed is bracketed
7 and stricken. New statutory material is underscored.

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

9

INTRODUCED BY:

~~AM~~ A.C. Fink-DA
BY REQUEST OF ANOTHER PERSON



S.B. NO. 336

Report Title:

Condominiums; Condominium Dispute Resolution; Office of Administrative Hearings

Description:

Establishes the condominium dispute resolution program for condominiums. Permits a party to proposed or terminated mediation to file a request for a hearing with the office of administrative hearings of the department of commerce and consumer affairs.

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

