
A BILL FOR AN ACT

RELATING TO CONDOMINIUM ASSOCIATIONS.

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

1 SECTION 1. The legislature finds condominium disputes can
2 be more efficiently resolved through the use of alternative
3 dispute resolution, such as mediation and arbitration, rather
4 than the generally costly and contentious judicial system.

5 However, numerous complaints have been made about the
6 unwillingness of parties involved in a condominium dispute to
7 participate in alternative dispute resolution despite the
8 express statutory requirements regarding mediation and
9 arbitration contained in Hawaii's condominium law.

10 The legislature affirms its intent that parties to
11 condominium disputes must participate in mediation or
12 arbitration as required under Hawaii law and that the dispute
13 resolution process should be expeditious and economical for all
14 parties.

15 SECTION 2. Section 514B-69, Hawaii Revised Statutes, is
16 amended to read as follows:



1 **"§514B-69 Penalties.** (a) Any person who violates or fails
2 to comply with this part, part V, section 514B-103, 514B-132,
3 514B-134, 514B-149, sections 514B-152 to 514B-154, or section
4 514B-154.5, shall be guilty of a misdemeanor and shall be
5 punished by a fine not exceeding \$10,000, or by imprisonment for
6 a term not exceeding one year, or both. Any person who violates
7 or fails to comply with any rule, order, decision, demand, or
8 requirement of the commission under this part, part V, section
9 514B-103, 514B-132, 514B-134, 514B-149, sections 514B-152 to
10 514B-154, or section 514B-154.5, shall be punished by a fine not
11 exceeding \$10,000.

12 (b) In addition to any other actions authorized by law,
13 any person who violates or fails to comply with this part, part
14 V, section 514B-103, 514B-132, 514B-134, 514B-149, sections
15 514B-152 to 514B-154, section 514B-154.5, or the rules of the
16 commission adopted pursuant thereto, shall also be subject to a
17 civil penalty not exceeding \$10,000 for any violation. Each
18 violation shall constitute a separate offense.

19 (c) In addition to any other actions authorized by law,
20 any person who violates or fails to comply with section 514B-161



1 or section 514B-162 shall be guilty of a misdemeanor and shall
2 be punished by a fine not exceeding \$10,000."

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

5 "(a) The commission shall establish a condominium
6 education trust fund that the commission shall use for
7 educational purposes. Educational purposes shall include
8 financing or promoting:

- 9 (1) Education and research in the field of condominium
10 management, condominium project registration, and real
11 estate, for the benefit of the public and those
12 required to be registered under this chapter;
- 13 (2) The improvement and more efficient administration of
14 associations;
- 15 (3) Expeditious and inexpensive procedures for resolving
16 association disputes; [~~and~~]
- 17 (4) Support for mediation of condominium related
18 disputes[~~;~~]; and
- 19 (5) Arbitration of condominium related disputes pursuant
20 to section 514B-162."



1 SECTION 4. Section 514B-162, Hawaii Revised Statutes, is
2 amended to read as follows:

3 "[~~§~~514B-162~~§~~] **Arbitration.** (a) At the request of any
4 party, any dispute concerning or involving one or more unit
5 owners and an association, its board, managing agent, or one or
6 more other unit owners relating to the interpretation,
7 application, or enforcement of this chapter or the association's
8 declaration, bylaws, or house rules adopted in accordance with
9 its bylaws shall be submitted to arbitration. The arbitration
10 shall be conducted, unless otherwise agreed by the parties, in
11 accordance with the rules adopted by the commission and of
12 chapter 658A; provided that the rules of the arbitration service
13 conducting the arbitration shall be used until the commission
14 adopts its rules; provided further that where any arbitration
15 rule conflicts with chapter 658A, chapter 658A shall prevail;
16 and provided further that notwithstanding any rule to the
17 contrary, the arbitrator shall conduct the proceedings in a
18 manner [~~which~~] that affords substantial justice to all parties.
19 The arbitrator shall be bound by rules of substantive law and
20 shall not be bound by rules of evidence, whether or not set out
21 by statute, except for provisions relating to privileged



1 communications. The arbitrator shall permit discovery as
2 provided for in the Hawaii rules of civil procedure; provided
3 that the arbitrator may restrict the scope of [~~such~~] the
4 discovery for good cause to avoid excessive delay and costs to
5 the parties or the arbitrator may refer any matter involving
6 discovery to the circuit court for disposition in accordance
7 with the Hawaii rules of civil procedure then in effect.

8 (b) Nothing in subsection (a) shall be interpreted to
9 mandate the arbitration of any dispute involving:

- 10 (1) The real estate commission;
- 11 (2) The mortgagee of a mortgage of record;
- 12 (3) The developer, general contractor, subcontractors, or
13 design professionals for the project; provided that
14 when any person exempted by this paragraph is also a
15 unit owner, a director, or managing agent, [~~such~~] the
16 person in those capacities, shall be subject to [~~the~~
17 ~~provisions of~~] subsection (a);
- 18 (4) Actions seeking equitable relief involving threatened
19 property damage or the health or safety of unit owners
20 or any other person;



- 1 (5) Actions to collect assessments [~~which~~] that are liens.
2 or subject to foreclosure; provided that a unit owner
3 who pays the full amount of an assessment and fulfills
4 the requirements of section 514B-146 [~~shall have the~~
5 ~~right to~~] may demand arbitration of the owner's
6 dispute, including a dispute about the amount and
7 validity of the assessment;
- 8 (6) Personal injury claims;
- 9 (7) Actions for amounts in excess of \$2,500 against an
10 association, a board, or one or more directors,
11 officers, agents, employees, or other persons, if
12 insurance coverage under a policy or policies procured
13 by the association or its board would be unavailable
14 because action by arbitration was pursued; or
- 15 (8) Any other cases [~~which~~] that are determined, as
16 provided in subsection (c), to be unsuitable for
17 disposition by arbitration.
- 18 (c) At any time within twenty days of being served with a
19 written demand for arbitration, any party so served may apply to
20 the circuit court in the judicial circuit in which the
21 condominium is located for a determination that the subject



1 matter of the dispute is unsuitable for disposition by
2 arbitration.

3 In determining whether the subject matter of a dispute is
4 unsuitable for disposition by arbitration, a court may consider:

- 5 (1) The magnitude of the potential award, or any issue of
6 broad public concern raised by the subject matter
7 underlying the dispute;
- 8 (2) Problems referred to the court where court regulated
9 discovery is necessary;
- 10 (3) The fact that the matter in dispute is a reasonable or
11 necessary issue to be resolved in pending litigation
12 and involves other matters not covered by or related
13 to this chapter;
- 14 (4) The fact that the matter to be arbitrated is only part
15 of a dispute involving other parties or issues [~~which~~
16 that are not subject to arbitration under this
17 section; and
- 18 (5) Any matters of dispute where disposition by
19 arbitration, in the absence of complete judicial
20 review, would not afford substantial justice to one or
21 more of the parties.



1 Any [~~such~~] application to the circuit court made pursuant
2 to this subsection shall be made and heard in a summary manner
3 and in accordance with procedures for the making and hearing of
4 motions. The prevailing party shall be awarded its attorneys'
5 fees and costs in an amount not to exceed \$200.

6 (d) [~~In the event of~~] If a dispute [~~as to~~] arises on
7 whether a claim shall be excluded from mandatory arbitration
8 under subsection (b)(7), any party to an arbitration may file a
9 complaint for declaratory relief against the involved insurer or
10 insurers for a determination of whether insurance coverage is
11 unavailable due to the pursuit of action by arbitration. The
12 complaint shall be filed with the circuit court in the judicial
13 circuit in which the condominium is located. The insurer or
14 insurers shall file an answer to the complaint within twenty
15 days of the date of service of the complaint and the issue shall
16 be disposed of by the circuit court at a hearing to be held at
17 the earliest available date; provided that the hearing shall not
18 be held within twenty days from the date of service of the
19 complaint upon the insurer or insurers.

20 (e) Notwithstanding any provision in this chapter to the
21 contrary, the declaration, or the bylaws, the award of any



1 costs, expenses, and legal fees by the arbitrator shall be in
2 the sole discretion of the arbitrator and the determination of
3 costs, expenses, and legal fees shall be binding upon all
4 parties.

5 (f) The award of the arbitrator shall be in writing and
6 acknowledged or proved in like manner as a deed for the
7 conveyance of real estate, and shall be served by the arbitrator
8 on each of the parties to the arbitration, personally or by
9 registered or certified mail. At any time within one year after
10 the award is made and served, any party to the arbitration may
11 apply to the circuit court of the judicial circuit in which the
12 condominium is located for an order confirming the award. The
13 court shall grant the order confirming the award pursuant to
14 section 658A-22, unless the award is vacated, modified, or
15 corrected, as provided in sections 658A-20, 658A-23, and
16 658A-24, or a trial de novo is demanded under subsection (h), or
17 the award is successfully appealed under subsection (h). The
18 record shall be filed with the motion to confirm award, and
19 notice of the motion shall be served upon each other party or
20 their respective attorneys in the manner required for service of
21 notice of a motion.



1 (g) Findings of fact and conclusions of law, as requested
2 by any party prior to the arbitration hearing, shall be promptly
3 provided to the requesting party upon payment of the reasonable
4 cost thereof.

5 (h) Any party to an arbitration under this section may
6 apply to vacate, modify, or correct the arbitration award for
7 the grounds set out in chapter 658A. All reasonable costs,
8 expenses, and attorneys' fees on appeal shall be charged to the
9 nonprevailing party.

10 (i) The condominium education trust fund under section
11 514B-71 shall be used to pay the arbitrator's fees only if all
12 parties to the arbitration agree that the arbitrator's decision
13 shall be binding and the parties waive their rights to trial de
14 novo under section 514B-163."

15 SECTION 5. This Act does not affect rights and duties that
16 matured, penalties that were incurred, and proceedings that were
17 begun before its effective date.

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

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



Report Title:

Condominium Associations; Dispute Resolution

Description:

Authorizes use of the condominium education trust fund to pay for arbitration of condominium disputes. Provides that use of trust fund moneys to pay arbitrator's fees shall only be allowed if parties agree to binding arbitration and rescind their rights to trial de novo. Provides penalties for noncompliance.

(HB1499 HD1)

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

