

JAN 19 2017

A BILL FOR AN ACT

RELATING TO CONDOMINIUMS.

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

1 SECTION 1. The legislature finds that mediation is an
2 existing and appropriate method of alternative dispute
3 resolution to address condominium related disputes. While the
4 courts are available to resolve conflicts, condominium law
5 should provide incentives for the meaningful use of alternative
6 dispute resolution mechanisms. Thus, the legislature further
7 finds that the scope of disputes eligible for mandatory
8 mediation should be expanded.

9 The legislature also finds that the additional annual
10 condominium education trust fund fee used to support mediation
11 of disputes should be adjusted downward and that any surplus
12 funds collected for the additional annual condominium education
13 trust fund should be applied to any of the educational purposes
14 established under section 514B-71(a), Hawaii Revised Statutes.

15 Accordingly, the purpose of this Act is to:

16 (1) Expand the scope of disputes for which a party can
17 initiate a mandatory mediation;



- 1 (2) Lower the additional annual condominium education
2 trust fund fee collected to support mediation and
3 discourage future surpluses;
- 4 (3) Broaden the use of the additional annual condominium
5 education trust fund fee surplus to be spent on all
6 educational purposes; and
- 7 (4) Amend the conditions that mandate mediation and
8 exceptions to mandatory mediation.

9 SECTION 2. Section 514B-71, Hawaii Revised Statutes, is
10 amended by amending subsection (a) to read as follows:

11 "(a) The commission shall establish a condominium
12 education trust fund that the commission shall use for
13 educational purposes. Educational purposes shall include
14 financing or promoting:

- 15 (1) Education and research in the field of condominium
16 management, condominium project registration, and real
17 estate, for the benefit of the public and those
18 required to be registered under this chapter;
- 19 (2) The improvement and more efficient administration of
20 associations;



- 1 (3) Expeditious and inexpensive procedures for resolving
- 2 association disputes; and
- 3 (4) Support for mediation of condominium related
- 4 disputes[-], including design and construction defect
- 5 claims."

6 SECTION 3. Section 514B-72, Hawaii Revised Statutes, is

7 amended by amending subsection (a) to read as follows:

8 "(a) Each project or association with more than five

9 units, including any project or association with more than five

10 units subject to chapter 514A, shall pay to the department of

11 commerce and consumer affairs:

- 12 (1) A condominium education trust fund fee within one year
- 13 after the recordation of the purchase of the first
- 14 unit or within thirty days of the association's first
- 15 meeting, and thereafter, on or before June 30 of every
- 16 odd-numbered year, as prescribed by rules adopted
- 17 pursuant to chapter 91; and
- 18 (2) Beginning with the July 1, [~~2015,~~] 2017, biennium
- 19 registration, an additional annual condominium
- 20 education trust fund fee in an amount equal to the
- 21 product of [~~\$1.50~~] 75 cents times the number of



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1 condominium units included in the registered project
2 or association to be dedicated to supporting mediation
3 of condominium related disputes. [~~The additional~~
4 ~~condominium education trust fund fee shall total \$3~~
5 ~~per unit until the commission adopts rules pursuant to~~
6 ~~chapter 91. On June 30 of every odd numbered year,~~
7 ~~any unexpended additional amounts paid into the~~
8 ~~condominium education trust fund and initially~~
9 ~~dedicated to supporting mediation of condominium~~
10 ~~related disputes, as required by this paragraph, shall~~
11 ~~be used for educational purposes as provided in~~
12 ~~section 514B 71(a) (1), (2), and (3).] If a surplus of
13 funds collected to support mediation of condominium
14 related disputes is anticipated in any biennium, the
15 surplus may be used for any educational purpose
16 provided for in section 514B-71(a) and the annual
17 condominium education trust fund fee collected for the
18 next biennium shall be decreased in an amount as
19 nearly equal to the amount of the surplus as is
20 practicable."~~



1 SECTION 4. Section 514B-157, Hawaii Revised Statutes, is
2 amended by amending subsection (b) to read as follows:

3 "(b) If any claim by an owner is substantiated in any
4 action against an association, any of its officers or directors,
5 or its board to enforce any provision of the declaration,
6 bylaws, house rules, or this chapter, then all reasonable and
7 necessary expenses, costs, and attorneys' fees incurred by an
8 owner shall be awarded to such owner; provided that no such
9 award shall be made in any derivative action unless:

10 (1) The owner first shall have demanded and allowed
11 reasonable time for the board to pursue such
12 enforcement; or

13 (2) The owner demonstrates to the satisfaction of the
14 court that a demand for enforcement made to the board
15 would have been fruitless.

16 If any claim by an owner is not substantiated in any court
17 action against an association, any of its officers or directors,
18 or its board to enforce any provision of the declaration,
19 bylaws, house rules, or this chapter, then all reasonable and
20 necessary expenses, costs, and attorneys' fees incurred by an
21 association shall be awarded to the association[, ~~unless before~~



1 ~~filing the action in court the owner has first submitted the~~
2 ~~claim to mediation, or to arbitration under subpart D, and made~~
3 ~~a good faith effort to resolve the dispute under any of those~~
4 ~~procedures]."~~

5 SECTION 5. Section 514B-161, Hawaii Revised Statutes, is
6 amended to read as follows:

7 "**§514B-161 Mediation.** (a) ~~[If an apartment owner or the~~
8 ~~board of directors requests mediation of a dispute involving the~~
9 ~~interpretation or enforcement of the association of apartment~~
10 ~~owners' declaration, bylaws, or house rules, the other party in~~
11 ~~the dispute shall be required to participate in mediation. Each~~
12 ~~party shall be wholly responsible for its own costs of~~
13 ~~participating in mediation, unless both parties agree that one~~
14 ~~party shall pay all or a specified portion of the mediation~~
15 ~~costs. If a party refuses to participate in the mediation of a~~
16 ~~particular dispute, a court may take this refusal into~~
17 ~~consideration when awarding expenses, costs, and attorneys'~~
18 ~~fees.] The mediation of a dispute between a unit owner and the~~
19 ~~board shall be mandatory upon written request to the other party~~
20 when:



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- 1 (1) The dispute involves the interpretation or enforcement
- 2 of:
- 3 (A) The association's declaration, bylaws, or house
- 4 rules; or
- 5 (B) Chapter 514B;
- 6 (2) The dispute falls outside the scope of subsection (b);
- 7 (3) The parties have not already mediated the same or a
- 8 substantially similar dispute; and
- 9 (4) An action or an arbitration concerning the dispute has
- 10 not been commenced.
- 11 (b) ~~[Nothing in subsection (a) shall be interpreted to~~
- 12 ~~mandate the mediation of any dispute involving:~~
- 13 ~~(1) Actions seeking equitable relief involving threatened~~
- 14 ~~property damage or the health or safety of association~~
- 15 ~~members or any other person;~~
- 16 ~~(2) Actions to collect assessments;~~
- 17 ~~(3) Personal injury claims; or~~
- 18 ~~(4) Actions against an association, a board, or one or~~
- 19 ~~more directors, officers, agents, employees, or other~~
- 20 ~~persons for amounts in excess of \$2,500 if insurance~~
- 21 ~~coverage under a policy of insurance procured by the~~



~~association or its board would be unavailable for
defense or judgment because mediation was pursued.]~~

The mediation of a dispute between a unit owner and the
board shall not be mandatory when the dispute involves:

- (1) Threatened property damage or the health or safety of
unit owners or any other person;
- (2) Assessments;
- (3) Personal injury claims; or
- (4) Matters that would affect the availability of any
coverage pursuant to an insurance policy obtained by
or on behalf of an association.

~~(c) [If any mediation under this section is not completed
within two months from commencement, no further mediation shall
be required unless agreed to by the parties.]~~ A unit owner or an
association may apply to the circuit court in the judicial
circuit where the condominium is located for an order compelling
mediation only when:

- (1) Mediation of the dispute is mandatory pursuant to
subsection (a);
- (2) A written request for mediation has been delivered to
and received by the other party; and



1 (3) The parties have not agreed to a mediator and a
2 mediation date within forty-five days after a party
3 receives a written request for mediation.

4 (d) Any application made to the circuit court pursuant to
5 subsection (c) shall be made and heard in a summary manner and
6 in accordance with procedures for the making and hearing of
7 motions. The prevailing party shall be awarded its attorneys'
8 fees and costs in an amount not to exceed \$200.

9 (e) Each party to a mediation shall bear the attorneys'
10 fees, costs, and other expenses of preparing for and
11 participating in mediation incurred by the party, in the absence
12 of:

13 (1) A written agreement providing otherwise that is signed
14 by the parties;

15 (2) An order of a court in connection with the final
16 disposition of a claim that was submitted to
17 mediation; or

18 (3) An award of an arbitrator in connection with the final
19 disposition of a claim that was submitted to
20 mediation.



- 1 (f) Any individual mediation supported with funds from the
2 condominium education trust fund pursuant to section 514B-71:
- 3 (1) Shall include a fee of \$150 to be paid by each party
4 to the mediator;
- 5 (2) Shall receive no more from the fund than is
6 appropriate under the circumstances, and in no event
7 more than \$6,000 total;
- 8 (3) May include issues and parties in addition to those
9 identified in subsection (a); provided that a unit
10 owner or a developer and board are parties to the
11 mediation at all times and the unit owner or developer
12 and the board mutually consent in writing to the
13 addition of such issues and parties; and
- 14 (4) May include an evaluation by the mediator of any
15 claims presented during the mediation.
- 16 (g) A court or an arbitrator with jurisdiction may
17 consider a timely request to stay any action or proceeding
18 concerning a dispute that would be subject to mediation pursuant
19 to subsection (a) in the absence of the action or proceeding,
20 and refer the matter to mediation; provided that:



1 (1) The court or arbitrator determines that the request is
2 made in good faith and a stay would not be prejudicial
3 to any party; and

4 (2) No stay shall exceed a period of ninety days."

5 SECTION 6. This Act does not affect rights and duties that
6 matured, penalties that were incurred, and proceedings that were
7 begun before its effective date.

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

10 SECTION 8. This Act shall take effect on July 1, 2017.

11

INTRODUCED BY: Hal Rhoads



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Report Title:

Condominiums; Condominium Association; Dispute Resolution; Mediation; Arbitration; Condominium Education Trust Fund

Description:

Broadens the scope of condominium related disputes for which an apartment owner or the board of directors can mandate mediation. Lowers the additional annual condominium education trust fund fee, used to support costs of mediation, to 75 cents times the number of condominiums units included in a registered project or association and discourages future surpluses of the fee. Specifies that any surplus funds collected for the additional annual condominium education trust fund to support mediation may be used for any education purpose provided under section 514B-71(a), HRS. Amends the conditions that mandate mediation and exceptions to mandatory mediation.

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

