
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 clarifying the conditions that mandate mediation and
8 exceptions to mandatory mediation is appropriate. The
9 legislature notes that the mandatory mediation proposed by this
10 measure is intended to require parties to resolve condominium-
11 related disputes through the use of alternative dispute
12 resolution.

13 The legislature also finds expanding the scope of the
14 condominium education trust fund to cover voluntary binding
15 arbitration between interested parties will further encourage
16 the use of alternative dispute resolution for condominium
17 related disputes.

18 Accordingly, the purpose of this Act is to:



1 (1) Expand the scope of the condominium education trust
2 fund to cover voluntary binding arbitration between
3 interested parties; and

4 (2) Amend the conditions that mandate mediation and
5 exceptions to mandatory mediation.

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

9 "§514B- Voluntary binding arbitration. (a) Any parties
10 permitted to mediate condominium related disputes pursuant to
11 section 514B-161 may agree to enter into binding arbitration,
12 which may be supported with funds from the condominium education
13 trust fund pursuant to section 514B-71.

14 (b) Any binding arbitration entered into pursuant to this
15 section and supported with funds from the condominium education
16 trust fund:

17 (1) Shall include a fee of \$175 to be paid by each party
18 to the arbitrator;

19 (2) Shall receive no more from the fund than is
20 appropriate under the circumstances, and in no event
21 more than \$3,000 total; and



1 (3) May include issues and parties in addition to those
 2 identified in subsection (a); provided that a unit
 3 owner or a developer and board are parties to the
 4 arbitrator at all times and the unit owner or
 5 developer and the board mutually consent in writing to
 6 the addition of such issues and parties."

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

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

13 (1) Education and research in the field of condominium
 14 management, condominium project registration, and real
 15 estate, for the benefit of the public and those
 16 required to be registered under this chapter;

17 (2) The improvement and more efficient administration of
 18 associations;

19 (3) Expeditious and inexpensive procedures for resolving
 20 association disputes; [and]



- 1 (4) Support for mediation of condominium related
- 2 disputes [-]; and
- 3 (5) Support for voluntary binding arbitration between
- 4 parties in condominium related disputes, pursuant to
- 5 section 514B- ."

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

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

- 15 (1) The owner first shall have demanded and allowed
- 16 reasonable time for the board to pursue such
- 17 enforcement; or
- 18 (2) The owner demonstrates to the satisfaction of the
- 19 court that a demand for enforcement made to the board
- 20 would have been fruitless.



1 If any claim by an owner is not substantiated in any court
2 action against an association, any of its officers or directors,
3 or its board to enforce any provision of the declaration,
4 bylaws, house rules, or this chapter, then all reasonable and
5 necessary expenses, costs, and attorneys' fees incurred by an
6 association shall be awarded to the association[, ~~unless before~~
7 ~~filing the action in court the owner has first submitted the~~
8 ~~claim to mediation, or to arbitration under subpart D, and made~~
9 ~~a good faith effort to resolve the dispute under any of those~~
10 ~~procedures]."~~

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

13 "**§514B-161 Mediation.** (a) [~~If an apartment owner or the~~
14 ~~board of directors requests mediation of a dispute involving the~~
15 ~~interpretation or enforcement of the association of apartment~~
16 ~~owners' declaration, bylaws, or house rules, 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 both parties agree that one~~
20 ~~party shall pay all or a specified portion of the mediation~~
21 ~~costs. If a party refuses to participate in the mediation of a~~



1 ~~particular dispute, a court may take this refusal into~~
 2 ~~consideration when awarding expenses, costs, and attorneys'~~
 3 ~~fees.]~~ The mediation of a dispute between a unit owner and the
 4 board shall be mandatory upon written request to the other party
 5 when:

- 6 (1) The dispute involves the interpretation or enforcement
- 7 of:
- 8 (A) The association's declaration, bylaws, or house
- 9 rules; or
- 10 (B) This chapter;
- 11 (2) The dispute falls outside the scope of subsection (b);
- 12 (3) The parties have not already mediated the same or a
- 13 substantially similar dispute; and
- 14 (4) An action or an arbitration concerning the dispute has
- 15 not been commenced.

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

- 18 ~~(1) Actions seeking equitable relief involving threatened~~
- 19 ~~property damage or the health or safety of association~~
- 20 ~~members or any other person;~~
- 21 ~~(2) Actions to collect assessments;~~



1 ~~(3) Personal injury claims; or~~
 2 ~~(4) Actions against an association, a board, or one or~~
 3 ~~more directors, officers, agents, employees, or other~~
 4 ~~persons for amounts in excess of \$2,500 if insurance~~
 5 ~~coverage under a policy of insurance procured by the~~
 6 ~~association or its board would be unavailable for~~
 7 ~~defense or judgment because mediation was pursued.]~~

8 (b) The mediation of a dispute between a unit owner and
 9 the board shall not be mandatory when the dispute involves:

10 (1) Threatened property damage or the health or safety of
 11 unit owners or any other person;

12 (2) Assessments;

13 (3) Personal injury claims; or

14 (4) Matters that would affect the availability of any
 15 coverage pursuant to an insurance policy obtained by
 16 or on behalf of an association.

17 ~~[(c) If any mediation under this section is not completed~~
 18 ~~within two months from commencement, no further mediation shall~~
 19 ~~be required unless agreed to by the parties.]~~

20 (c) If evaluative mediation is requested in writing by one
 21 of the parties pursuant to subsection (a), the other party



1 cannot choose to do facilitative mediation instead, and any
2 attempt to do so shall be treated as a rejection to mediate.

3 (d) A unit owner or an association may apply to the
4 circuit court in the judicial circuit where the condominium is
5 located for an order compelling mediation only when:

6 (1) Mediation of the dispute is mandatory pursuant to
7 subsection (a);

8 (2) A written request for mediation has been delivered to
9 and received by the other party; and

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

13 (e) Any application made to the circuit court pursuant to
14 subsection (d) shall be made and heard in a summary manner and
15 in accordance with procedures for the making and hearing of
16 motions. The prevailing party shall be awarded its attorneys'
17 fees and costs in an amount not to exceed \$1,500.

18 (f) Each party to a mediation shall bear the attorneys'
19 fees, costs, and other expenses of preparing for and
20 participating in mediation incurred by the party, in the absence
21 of:



- 1 (1) A written agreement providing otherwise that is signed
- 2 by the parties;
- 3 (2) An order of a court in connection with the final
- 4 disposition of a claim that was submitted to
- 5 mediation; or
- 6 (3) An award of an arbitrator in connection with the final
- 7 disposition of a claim that was submitted to
- 8 mediation.
- 9 (g) Any individual mediation supported with funds from the
- 10 condominium education trust fund pursuant to section 514B-71:
- 11 (1) Shall include a fee of \$150 to be paid by each party
- 12 to the mediator;
- 13 (2) Shall receive no more from the fund than is
- 14 appropriate under the circumstances, and in no event
- 15 more than \$6,000 total;
- 16 (3) May include issues and parties in addition to those
- 17 identified in subsection (a); provided that a unit
- 18 owner or a developer and board are parties to the
- 19 mediation at all times and the unit owner or developer
- 20 and the board mutually consent in writing to the
- 21 addition of such issues and parties; and



1 (4) May include an evaluation by the mediator of any
2 claims presented during the mediation.

3 (h) A court or an arbitrator with jurisdiction may
4 consider a timely request to stay any action or proceeding
5 concerning a dispute that would be subject to mediation pursuant
6 to subsection (a) in the absence of the action or proceeding,
7 and refer the matter to mediation; provided that:

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

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

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

15 SECTION 7. Statutory material to be repealed is bracketed
16 and stricken. New statutory material is underscored.

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

18



Report Title:

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

Description:

Expands the scope of the condominium education trust fund to cover voluntary binding arbitration between interested parties. Amends the conditions that mandate mediation and exceptions to mandatory mediation. (SD1)

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

