

STAND. COM. REP. NO. 1099

Honolulu, Hawaii

MAR 24 2017

RE: H.B. No. 1499  
H.D. 1  
S.D. 1

Honorable Ronald D. Kouchi  
President of the Senate  
Twenty-Ninth State Legislature  
Regular Session of 2017  
State of Hawaii

Sir:

Your Committee on Commerce, Consumer Protection, and Health, to which was referred H.B. No. 1499, H.D. 1, entitled:

"A BILL FOR AN ACT RELATING TO CONDOMINIUM ASSOCIATIONS,"

begs leave to report as follows:

The purpose and intent of this measure is to:

- (1) Authorize the use of the Condominium Education Trust Fund to pay for arbitration of condominium disputes;
- (2) Specify that use of trust fund monies to pay arbitrator's fees shall only be allowed if parties agree to binding arbitration and rescind their rights to trial de novo; and
- (3) Provide penalties for noncompliance.

Prior to holding a hearing on this measure, your Committee made available for public review a proposed S.D. 1 of this measure. The proposed S.D. 1 deleted the contents of this measure and inserted provisions that:

- (1) Clarify the process, including payment obligations, mediation requirements, and triggers for further default, where a condominium unit owner and association



reach a payment plan to resolve a nonjudicial foreclosure; establish procedures that provide condominium owners with the right to submit disputed legal fees, penalties or fines, late fees, lien filing fees, or other charges, except for common expense assessments, to the mediation process prior to payment; and make conforming amendments; and

- (2) Expand the scope of the Condominium Education Trust Fund to cover voluntary binding arbitration between interested parties and amend the conditions that mandate mediation and exceptions to mandatory mediation.

Your Committee received testimony in support of the proposed S.D. 1 from the Hawaii Council of Associations of Apartment Owners and Associa. Your Committee received comments on the proposed S.D. 1 from the Real Estate Commission and two individuals.

Your Committee finds that under existing law, if an association of apartment owners starts a nonjudicial foreclosure against a condominium owner and the owner pays off the delinquency or proposes a payment plan that the association accepts, the association is supposed to rescind the notice of foreclosure and not proceed. However, proposing a payment plan is not sufficient on its own to cure a default. Accordingly, the proposed S.D. 1 clarifies the process once a condominium owner and association agree on a payment plan to resolve a nonjudicial foreclosure. The proposed S.D. 1 also amends Hawaii's existing pay first, dispute later requirement, which specifies that owners are not permitted to withhold any assessment claimed by their association, but must first pay the disputed amounts and then exercise their right to mediation, arbitration, or small claims court, to make it clear that common expense assessments are the only fees that must be paid prior to initiating a dispute. Under the proposed S.D. 1, all other penalties or fines, late fees, lien filing fees, or other charges in an assessment may be submitted to mediation prior to payment.

Your Committee further finds that alternative dispute resolution is a viable, affordable option for handling condominium-related disputes. However, under existing law, mediation is only nominally mandatory, as there are few incentives and no penalties for any board that refuses to engage in



mediation. Accordingly, the proposed S.D. 1 expands the scope of the Condominium Education Trust Fund to cover voluntary binding arbitration between interested parties and amends the conditions that mandate mediation and exceptions to mandatory mediation.

Your Committee has heard the concerns that, because arbitration can be costlier than mediation, the limits on support from the Condominium Education Trust Fund for voluntary binding arbitration and mediation in the proposed S.D. 1 may not accurately reflect the costs associated with these forms of alternative dispute resolution. Your Committee has also heard the concerns that certain language in the proposed S.D. 1, which removes a requirement for owners to make a good faith effort to resolve a dispute under alternative dispute resolution, may unintentionally remove any incentive for owners to attempt mediation as a first resort. Your Committee understands these concerns and concludes that amendments to the proposed S.D. 1 are necessary.

Accordingly, your Committee has amended this measure by adopting the proposed S.D. 1 and by making further amendments which:

- (1) Clarify that a condominium owner who contests the amount of any attorneys' fees and costs, penalties or fines, late fees, lien filing fees, or any other charges, except common expense assessments, may make a demand in writing for mediation on the validity of those other charges;
- (2) Retain language specifying that no association shall deduct and apply portions of common expense payments received from an apartment owner to unpaid late fees, or from a unit owner to unpaid late fees, legal fees, fines, and interest (other than amounts remitted by an apartment in payment of late fees or a unit in payment of late fees, legal fees, fines, and interest);
- (3) Clarify that funds from the Condominium Education Trust Fund may be used to support parties who agree to enter into voluntary binding arbitration, but only after the parties have first attempted evaluative mediation;



- (4) Clarify that the maximum amount of support from the Condominium Education Trust Fund for voluntary binding arbitration shall be \$6,000, rather than \$3,000;
- (5) Remove section 15, which would have deleted a requirement for an owner to first submit a claim against an association to mediation or arbitration, and make a good faith effort to resolve the dispute under these alternative dispute resolution procedures;
- (6) Clarify that the parties subject to mediation, including mandatory mediation, of a dispute include a unit owner and the board, unit owner and the managing agent, board members and the board, or directors and managing agents and the board;
- (7) Clarify that each party to a mediation is responsible for the party's own fees, costs, and expenses, unless otherwise specified in a written agreement, court order, or arbitration award;
- (8) Clarify that each party to a mediation supported by funds from the Condominium Education Trust Fund shall pay a fee of \$375 to the mediator, as this is consistent with the usual costs associated with evaluative mediation, and capping the support for mediation from the trust fund at \$3,000, rather than \$6,000; and
- (9) Make technical, nonsubstantive amendments for the purposes of clarity and consistency.

As affirmed by the record of votes of the members of your Committee on Commerce, Consumer Protection, and Health that is attached to this report, your Committee is in accord with the intent and purpose of H.B. No. 1499, H.D. 1, as amended herein, and recommends that it pass Second Reading in the form attached hereto as H.B. No. 1499, H.D. 1, S.D. 1, and be referred to your Committees on Judiciary and Labor and Ways and Means.



Respectfully submitted on  
behalf of the members of the  
Committee on Commerce, Consumer  
Protection, and Health,

*Rosalyn H. Baker*

---

ROSALYN H. BAKER, Chair



