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## A BILL FOR AN ACT

RELATING TO HOMEOWNERS' ASSOCIATIONS.

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

1       SECTION 1. Unlike condominium property regimes,  
2 homeowners' associations in Hawaii are not governed by statutory  
3 provisions of the Hawaii Revised Statutes that address issues  
4 such as dispute resolution, education of board members,  
5 maintenance of common elements, handling of fees collected from  
6 association members, and numerous administrative tasks.  
7 Homeowners and homeowners' associations must often rely upon  
8 case law and litigation in court to settle various types of  
9 disputes.

10       In the county of Hawaii, a number of subdivisions were  
11 built without adequate infrastructure such as utilities, fire  
12 hydrants, and paved roads. This resulted in the creation of  
13 numerous homeowners' associations organized by residents to try  
14 to collect fees and disburse funds to pay for the creation,  
15 repair, and maintenance of basic infrastructure and common areas  
16 of the subdivision, as well as address other issues facing the  
17 subdivision. However, the creation of these mostly volunteer



1 organizations had unintended consequences. Many of these  
2 organizations were administered by individuals with little to no  
3 experience, training, skill, or education in subjects such as  
4 the administration of meetings, dispute resolution, procurement  
5 of services, and the maintenance and repair of infrastructure  
6 such as roads and utilities. As a result, disputes between  
7 homeowners and homeowners' associations began to arise with the  
8 majority of disputes rooted in issues concerning infrastructure  
9 within the subject subdivision, the administration of the  
10 homeowners' association, and the collection and disbursement of  
11 fees by the homeowners' association.

12 The legislature finds that disputes between homeowners and  
13 homeowners' associations often involve neighbors, at times  
14 involve law enforcement, attorneys, and the courts, and have  
15 depleted resources in legal fees that are meant for common  
16 ownership maintenance. Additionally, a single homeowner may not  
17 have the resources to dispute actions by a homeowners'  
18 association board member or the homeowners' association board  
19 itself. As such, the development of an alternative dispute  
20 resolution mechanism to resolve disputes between a homeowner and  
21 homeowners' association will be beneficial for all parties  
22 involved.



1        Accordingly, the purpose of this Act is to establish a  
2 five-year homeowners' association dispute mediation pilot  
3 project within the office of the ombudsman to provide an  
4 alternative dispute resolution mechanism to address disputes  
5 between individual homeowners and a homeowners' association in a  
6 county with a population greater than 170,000 but less than  
7 200,000.

8        SECTION 2. Section 96-5, Hawaii Revised Statutes, is  
9 amended to read as follows:

10        "**§96-5 Jurisdiction.** The ombudsman has jurisdiction to  
11 investigate the administrative acts of agencies and the  
12 ombudsman may exercise the ombudsman's powers without regard to  
13 the finality of any administrative act[-]; provided that the  
14 ombudsman shall also have jurisdiction and may exercise the  
15 ombudsman's powers for the establishment and administration of  
16 the five-year homeowners' association dispute mediation pilot  
17 project established by Act     , Session Laws of Hawaii 2018."

18        SECTION 3. (a) There is established within the office of  
19 the ombudsman a five-year homeowners' association dispute  
20 mediation pilot project to provide an alternative dispute  
21 resolution mechanism to address disputes between individual  
22 homeowners and a homeowners' association involving the



1 interpretation or enforcement of the declaration, bylaws, or  
2 rules of the homeowners' association. The pilot project shall  
3 be implemented, and shall only be applicable to disputes between  
4 individual homeowners and a homeowners' association, in a county  
5 with a population greater than 170,000 but less than 200,000.

6 (b) The office of the ombudsman shall develop policies and  
7 procedures for the homeowners' association dispute mediation  
8 pilot project. At a minimum, the homeowners' association  
9 dispute mediation pilot project policies and procedures shall  
10 include policies and procedures to:

- 11 (1) Receive, process, and investigate any complaints  
12 regarding disputes between individual homeowners and a  
13 homeowners' association;
- 14 (2) Determine whether the dispute warrants mediation,  
15 including the methodology used to make this  
16 determination, or whether the parties involved need to  
17 seek redress through the judicial system;
- 18 (3) Report any findings made in any investigation  
19 conducted regarding a dispute;
- 20 (4) Make inquiries and obtain information in conducting an  
21 investigation;



- 1 (5) Maintain confidentiality in respect to all matters and  
2 the identities of the parties or witnesses except so  
3 far as disclosures may be necessary to enable the  
4 office of the ombudsman to carry out the office of the  
5 ombudsman's duties and to support the office of the  
6 ombudsman's recommendations;
- 7 (6) Provide notification to a complainant and the  
8 homeowners' association upon initiation and conclusion  
9 of an investigation;
- 10 (7) Provide notification to a complainant and the  
11 homeowners' association of the availability of a  
12 report of the investigation;
- 13 (8) Address situations where a party involved in the  
14 dispute refuses to participate in mediation of a  
15 particular dispute;
- 16 (9) Address situations where mediation may not be  
17 warranted;
- 18 (10) Determine the timeframe in which mediation shall be  
19 completed and the process for obtaining any extensions  
20 to this timeframe; and
- 21 (11) Determine the responsibility for the costs of  
22 providing mediation services.



1 (c) The office of the ombudsman shall adopt rules in  
2 accordance with chapter 91, Hawaii Revised Statutes, necessary  
3 to carry out the purposes of this section.

4 (d) For the purposes of this section, "homeowners'  
5 association" means an association in which the voting membership  
6 is made up of ten or more parcel owners or their proxies, or a  
7 combination thereof and assessments may be imposed that, if  
8 unpaid, may become a lien on the parcel.

9 (e) The office of the ombudsman shall submit a progress  
10 report of its findings and recommendations regarding the  
11 development and implementation of the homeowners' association  
12 dispute mediation pilot project to the legislature no later than  
13 twenty days prior to the convening of the regular sessions of  
14 2019, 2020, 2021, and 2022, and shall submit a final report of  
15 its findings and recommendations, including any proposed  
16 legislation, to the legislature no later than twenty days prior  
17 to the convening of the regular session of 2023.

18 (f) The homeowners' association dispute mediation pilot  
19 project shall cease to exist on June 30, 2023.

20 SECTION 4. There is appropriated out of the general  
21 revenues of the State of Hawaii the sum of \$ or so much  
22 thereof as may be necessary for fiscal year 2018-2019 to



# H.B. NO. 2034

1 establish the homeowners' association dispute mediation pilot  
2 project.

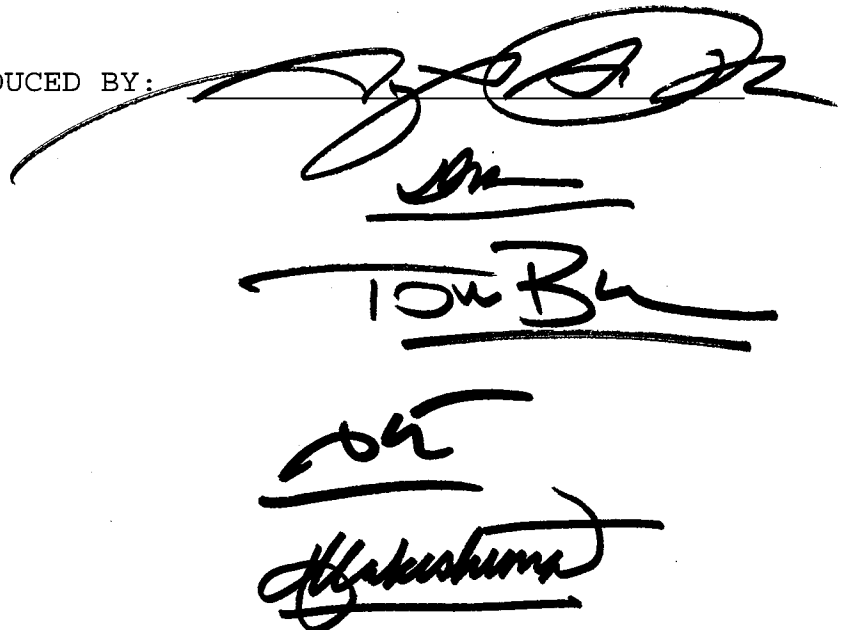
3 The sum appropriated shall be expended by the office of the  
4 ombudsman for the purposes of this Act.

5 SECTION 5. Statutory material to be repealed is bracketed  
6 and stricken. New statutory material is underscored.

7 SECTION 6. This Act shall take effect on July 1, 2018, and  
8 shall be repealed on June 30, 2023, and section 96-5, Hawaii  
9 Revised Statutes, shall be reenacted in the form in which it  
10 read on June 30, 2018.

11

INTRODUCED BY:

The block contains four handwritten signatures. The first is a large, stylized signature that appears to be 'J. A. R.'. Below it is a signature that looks like 'M.'. The third signature is 'Tom B.'. The fourth signature is 'H. K. K.'.

JAN 19 2018



# H.B. NO. 2034

**Report Title:**

Homeowners' association; Dispute mediation; Ombudsman

**Description:**

Establishes a five-year pilot project for homeowners' association dispute mediation within the Office of the Ombudsman. Provides the Ombudsman with temporary authority to administer the pilot project. Appropriates funds.

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

