

JAN 18 2019

A BILL FOR AN ACT

RELATING TO CONDOMINIUMS.

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

1 SECTION 1. Chapter 514B, Part VI, Subpart D, Hawaii
2 Revised Statutes, is amended by adding a new section to be
3 appropriately designated and to read as follows:

4 "§514B- Referral of disputes to the commission.

5 Pursuant to this section and to 467-4, the real estate
6 commission shall:

7 (1) Adopt, amend, or repeal rules pursuant to chapter 91
8 as it may deem proper to effectuate this section and
9 carry out its purpose, which shall have the force and
10 effect of law;

11 (2) Enforce this section and rules adopted pursuant
12 thereto;

13 (3) Shall receive and investigate any complaints regarding
14 disputes between an association and a unit owner or
15 any complaints referred to mandatory mediation,
16 mandatory arbitration, or voluntary binding
17 arbitration, pursuant to this subpart;



- 1 (4) Shall establish procedures for receiving and
2 processing complaints, conducting investigations, and
3 reporting the commission's findings; provided that the
4 commission may not levy fees for the submission or
5 investigation of complaints;
- 6 (5) May make inquiries and obtain information as the
7 commission thinks fit in conducting an investigation;
8 and
- 9 (6) Shall maintain secrecy in respect to all matters and
10 the identities of the complainants or witnesses except
11 so far as disclosures may be necessary to enable the
12 commission to carry out the ombudsman's duties and to
13 support the ombudsman's recommendations."

14 SECTION 2. Section 467-4, Hawaii Revised Statutes, is
15 amended to read as follows:

16 **"§467-4 Powers and duties of commission.** In addition to
17 any other powers and duties authorized by law, the real estate
18 commission shall:

- 19 (1) Grant licenses, registrations, and certificates
20 pursuant to this chapter;



1 (2) Adopt, amend, or repeal rules as it may deem proper to
2 effectuate this chapter and carry out its purpose,
3 which is the protection of the general public in its
4 real estate transactions. All rules shall be approved
5 by the governor and the director of commerce and
6 consumer affairs, and when adopted pursuant to chapter
7 91 shall have the force and effect of law. The rules
8 may forbid acts or practices deemed by the commission
9 to be detrimental to the accomplishment of the purpose
10 of this chapter, and the rules may require real estate
11 brokers and salespersons to complete educational
12 courses or to make reports to the commission
13 containing items of information as will better enable
14 the commission to enforce this chapter and the rules,
15 or as will better enable the commission from time to
16 time to amend the rules to more fully effect the
17 purpose of this chapter, and, further, the rules may
18 require real estate brokers and salespersons to
19 furnish reports to their clients containing matters of
20 information as the commission deems necessary to
21 promote the purpose of this chapter. This enumeration



1 of specific matters that may properly be made the
2 subject of rules shall not be construed to limit the
3 commission's broad general power to make all rules
4 necessary to fully effectuate the purpose of this
5 chapter;

6 (3) Enforce this chapter and rules adopted pursuant
7 thereto;

8 (4) Suspend, fine, terminate, or revoke any license,
9 registration, or certificate for any cause prescribed
10 by this chapter, or for any violation of the rules,
11 and may also require additional education or
12 reexamination, and refuse to grant any license,
13 registration, or certificate for any cause that would
14 be a ground for suspension, fine, termination, or
15 revocation of a license, registration, or certificate;

16 (5) Report to the governor and the legislature relevant
17 information that shall include but not be limited to a
18 summary of the programs and financial information
19 about the trust funds, including balances and budgets,
20 through the director of commerce and consumer affairs
21 annually, before the convening of each regular



1 session, and at other times and in other manners as
2 the governor or the legislature may require concerning
3 its activities;

4 (6) Publish and distribute pamphlets and circulars,
5 produce seminars and workshops, hold meetings in all
6 counties, and require other education regarding any
7 information as is proper to further the accomplishment
8 of the purpose of this chapter;

9 (7) Enter into contract or contracts with qualified
10 persons to assist the commission in effectuating the
11 purpose of this chapter; ~~and~~

12 (8) Establish standing committees to assist in
13 effectuating this chapter and carry out its purpose,
14 which shall meet not less often than ten times
15 annually, and shall from time to time meet in each of
16 the counties ~~[-]~~; and

17 (9) Perform all duties as required under 514B- ."

18 SECTION 3. Section 514B-146, Hawaii Revised Statutes, is
19 amended by amending subsection (f) to read as follows:

20 "(f) A unit owner who pays an association the full amount
21 of the common expenses claimed by the association may file in



1 small claims court or require the association to mediate to
2 resolve any disputes concerning the amount or validity of the
3 association's common expense claim. If the unit owner and the
4 association are unable to resolve the dispute through mediation,
5 either party may file for arbitration under section 514B-162;
6 provided that a unit owner may only file for arbitration if all
7 amounts claimed by the association as common expenses are paid
8 in full on or before the date of filing. If the unit owner
9 fails to keep all association common expense assessments current
10 during the arbitration, the association may ask the [~~arbitrator~~]
11 commission to temporarily suspend the arbitration proceedings.
12 If the unit owner pays all association common expense
13 assessments within thirty days of the date of suspension, the
14 unit owner may ask the [~~arbitrator~~] commission to recommence the
15 arbitration proceedings. If the unit owner fails to pay all
16 association common expense assessments by the end of the thirty-
17 day period, the association may ask the [~~arbitrator~~] commission
18 to dismiss the arbitration proceedings. The unit owner shall be
19 entitled to a refund of any amounts paid as common expenses to
20 the association that are not owed."



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1 SECTION 4. Section 514B-161, Hawaii Revised Statutes, is
2 amended as follows:

3 1. By amending subsection (d) to read:

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

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

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

11 (3) The parties have not agreed to [~~a mediator and a~~
12 mediate before the commission or obtained a mediation
13 date within forty-five days after a party receives a
14 written request for mediation."

15 2. By amending subsections (f), (g), and (h) to read:

16 "(f) Each party to a mediation shall bear the attorneys'
17 fees, costs, and other expenses of preparing for and
18 participating in mediation incurred by the party, unless
19 otherwise specified in:

20 (1) A written agreement providing otherwise that is signed
21 by the parties;



- 1 (2) An order of a court in connection with the final
2 disposition of a claim that was submitted to
3 mediation;
- 4 (3) An award of [~~an arbitrator~~] the commission in
5 connection with the final disposition of a claim that
6 was submitted to mediation; or
- 7 (4) An order of the circuit court in connection with
8 compelled mediation in accordance with subsection (e).
- 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 \$375 to be paid by each party~~
12 ~~to the mediator;~~
- 13 ~~+(2)]~~ (1) Shall receive no more from the fund than is
14 appropriate under the circumstances, and in no event
15 more than \$3,000 total;
- 16 ~~+(3)]~~ (2) May include issues and parties in addition to
17 those identified in subsection (a); provided that a
18 unit 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 the issues and parties; and



1 [~~4~~] (3) May include an evaluation by the mediator of any
2 claims presented during the mediation.

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

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

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

13 SECTION 5. Section 514B-162, Hawaii Revised Statutes, is
14 amended as follows:

15 1. By amending subsection (a) to read:

16 "(a) At the request of any party, any dispute concerning
17 or involving one or more unit owners and an association, its
18 board, managing agent, or one or more other unit owners relating
19 to the interpretation, application, or enforcement of this
20 chapter or the association's declaration, bylaws, or house rules
21 adopted in accordance with its bylaws shall be submitted to



1 arbitration. The arbitration shall be conducted, unless
2 otherwise agreed by the parties, in accordance with the rules
3 adopted by the commission and of chapter 658A; provided that the
4 rules of the [~~arbitration service conducting the arbitration~~]
5 commission shall be used [~~until the commission adopts its~~
6 ~~rules~~]; provided further that where any arbitration rule
7 conflicts with chapter 658A, chapter 658A shall prevail; and
8 provided further that notwithstanding any rule to the contrary,
9 the [~~arbitrator~~] commission shall conduct the proceedings in a
10 manner which affords substantial justice to all parties. The
11 [~~arbitrator~~] commission shall be bound by rules of substantive
12 law and shall not be bound by rules of evidence, whether or not
13 set out by statute, except for provisions relating to privileged
14 communications. The [~~arbitrator~~] commission shall permit
15 discovery as provided for in the Hawaii rules of civil
16 procedure; provided that the [~~arbitrator~~] commission may
17 restrict the scope of such discovery for good cause to avoid
18 excessive delay and costs to the parties or the [~~arbitrator~~]
19 commission may refer any matter involving discovery to the
20 circuit court for disposition in accordance with the Hawaii
21 rules of civil procedure then in effect."



1 2. By amending subsections (e) and (f) to read:

2 "(e) Notwithstanding any provision in this chapter to the
3 contrary, the declaration, or the bylaws, the award of any
4 costs, expenses, and legal fees by the [~~arbitrator~~] commission
5 shall be in the sole discretion of the [~~arbitrator~~] commission
6 and the determination of costs, expenses, and legal fees shall
7 be binding upon all parties.

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



1 the motion to confirm award, and notice of the motion shall be
2 served upon each other party or their respective attorneys in
3 the manner required for service of notice of a motion."

4 SECTION 6. Section 514B-162.5, Hawaii Revised Statutes, is
5 amended by amending subsection (b) to read as follows:

6 "(b) Any voluntary binding arbitration entered into
7 pursuant to this section and supported with funds from the
8 condominium education trust fund:

9 ~~[-(1) Shall include a fee of \$175 to be paid by each party
10 to the arbitrator;~~

11 ~~-(2)]~~ (1) Shall receive no more from the fund than is
12 appropriate under the circumstances, and in no event
13 more than \$6,000 total; and

14 ~~[-(3)]~~ (2) May include issues and parties in addition to
15 those identified in subsection (a); provided that a
16 unit owner or a developer and board are parties to the
17 arbitration at all times and the unit owner or
18 developer and the board mutually consent in writing to
19 the addition of the issues and parties."

20 SECTION 7. Statutory material to be repealed is bracketed
21 and stricken. New statutory material is underscored.



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1 SECTION 8. This Act shall take effect upon its approval.

2

INTRODUCED BY:

~~AND DC~~ *[Signature]*
BY REQUEST OF KNOWLEDGE
PARTY



S.B. NO. 306

Report Title:

Condominium Disputes; Real Estate Commission; Mediation;
Arbitration; Associations; Unit Owners

Description:

Requires the real estate commission to receive any complaints regarding disputes between a condominium association and a unit owner or any complaints referred to mandatory mediation, mandatory arbitration, or voluntary binding arbitration.

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

