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# A BILL FOR AN ACT

RELATING TO HOMEOWNER ASSOCIATIONS.

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

1 PART I

2 SECTION 1. The legislature finds that while homeowner  
3 association self-governance can be successful in the State,  
4 there have been many cases of abuse of power and other acts of  
5 malfeasance by certain association boards, association  
6 management, managing agents and their employees, and association  
7 attorneys clogging courts with litigation. This is further  
8 evidenced by public statements by leading insurance  
9 professionals that Hawaii has the highest number of association  
10 directors' and officers' liability insurance claims in the  
11 nation, assertions that are more alarming because Hawaii has a  
12 comparatively small fraction of the number of homeowners  
13 associations in other states.

14 The legislature also finds that a central enforcement body  
15 is needed to address systemic problems faced by many owners  
16 whose properties are governed by homeowner associations who are  
17 subjected to retribution and retaliation from boards and their



1 members, association management, managing agents and their  
2 employees, and others representing the association. This  
3 retaliation harasses owners and impacts them emotionally and  
4 financially, with unwarranted and improper fines, assessments,  
5 legal costs, and foreclosures.

6 The purpose of this Act is to:

7 (1) Establish an ombudsman's office for homeowner  
8 associations within the department of commerce and  
9 consumer affairs to:

10 (A) Serve as a resource for members of homeowner  
11 associations;

12 (B) Provide an office for association members to  
13 bring complaints for investigation and a process  
14 for dispute intervention through the office;

15 (C) Ensure compliance with existing laws and  
16 association governing documents, and seek  
17 resolution to disputes without the burdensome  
18 cost of attorneys;

19 (D) Provide necessary education, including training  
20 and certification for board members involved in



- 1 governance and managing agents overseeing  
2 association business;
- 3 (E) Provide association members with access to  
4 association documents;
- 5 (F) Increase efficiency in addressing association-  
6 related issues;
- 7 (G) Maintain data on inquiries and complaints  
8 received, types of assistance requested, notices  
9 of decisions, actions taken, and the disposition  
10 of matters; and
- 11 (H) Provide for the administration of an election  
12 monitoring process if requested by association  
13 members;
- 14 (2) Establish an ombudsman's office special fund to cover  
15 the costs of the ombudsman's office, with no impact on  
16 the State's general fund;
- 17 (3) Require homeowner association board members to meet  
18 certain educational requirements through classes  
19 offered by the ombudsman;
- 20 (4) Update chapters 514B, 421I, and 421J, Hawaii Revised  
21 Statutes, to integrate the role and functions of the



1           ombudsman's office for condominium associations,  
 2           cooperative housing corporations, and planned  
 3           community associations, respectively; and  
 4       (5)   Appropriate funds for the establishment of the  
 5           ombudsman's office.

PART II

7           SECTION 2. The Hawaii Revised Statutes is amended by  
 8 adding a new chapter to be appropriately designated and to read  
 9 as follows:

**"CHAPTER**

**OMBUDSMAN'S OFFICE FOR HOMEOWNER ASSOCIATIONS**

§ -1 **Definitions.** As used in this chapter:

"Board", "board of directors", or "homeowner association  
 board" means: the body, regardless of name, designated in the  
 declaration or bylaws to act on behalf of a condominium  
 association; the board of directors of a cooperative housing  
 corporation; or the executive board or other body, regardless of  
 name, designated in a planned community association's  
 association documents to act on behalf of the planned community  
 association.



1 "Complaints and enforcement officer" means the complaints  
2 and enforcement officer established pursuant to section -3.

3 "Department" means the department of commerce and consumer  
4 affairs.

5 "Director" means the director of commerce and consumer  
6 affairs.

7 "Homeowner association" refers collectively to the  
8 associations representing unit owners of condominiums under  
9 chapter 514B, cooperative housing corporations under chapter  
10 421I, and planned community associations under chapter 421J.

11 "Homeowner association laws" refers collectively to the  
12 laws governing associations representing unit owners of  
13 condominiums under chapter 514B, cooperative housing  
14 corporations under chapter 421I, and planned community  
15 associations under chapter 421J.

16 "Intake specialist" means the intake specialist established  
17 pursuant to section -3.

18 "Ombudsman's office" means the ombudsman's office for  
19 homeowner associations established pursuant to section -2.

20 "Unit owner" means an owner of property governed by a  
21 condominium association or planned community association or a



1 tenant shareholder of property governed by a cooperative housing  
2 corporation.

3       § -2 **Ombudsman's office for homeowner associations**  
4 **established; ombudsman; criteria for ombudsman.** (a) There is  
5 established within the department an ombudsman's office for  
6 homeowner associations. The ombudsman's office for homeowner  
7 associations shall be headed by the ombudsman, who shall be  
8 appointed by the director with the approval of the governor.

9       (b) The ombudsman shall have been admitted to practice law  
10 before the Hawaii supreme court and shall have extensive  
11 experience in Hawaii real estate, homeowner association laws,  
12 and conflict and alternative dispute resolution. The ombudsman  
13 shall not:

14       (1) Engage or have been engaged within the past two years  
15             in any other business or profession that directly or  
16             indirectly relates to or conflicts with the work of  
17             the ombudsman's office;

18       (2) Serve as the representative, executive, officer, or  
19             employee of any political party, executive committee,  
20             or other governing body of a political party;



- 1 (3) Receive remuneration for activities on behalf of any
- 2 candidate for public office;
- 3 (4) Engage in soliciting votes or other activities on
- 4 behalf of a candidate for public office; or
- 5 (5) Become a candidate for election to public office
- 6 unless the ombudsman first resigns from the
- 7 ombudsman's office.

8 The ombudsman shall be exempt from chapter 76.

9 § -3 **Personnel; salary; benefits.** (a) The ombudsman  
10 shall employ professional and clerical staff as necessary for  
11 the efficient operation of the office. The ombudsman may  
12 appoint persons who have been admitted to practice law before  
13 the Hawaii supreme court as staff without regard to chapter 76.  
14 All other employees shall be appointed by the ombudsman in  
15 accordance with chapter 76.

16 (b) The ombudsman shall appoint complaints and enforcement  
17 officers who have been admitted to practice law before the  
18 Hawaii supreme court and have extensive experience in Hawaii  
19 real estate, homeowner association laws, and conflict and  
20 alternative dispute resolution. The complaints and enforcement  
21 officers shall be exempt from chapter 76.



1 (c) The ombudsman's office shall integrate the existing  
2 condominium specialist positions in the department of commerce  
3 and consumer affairs into the ombudsman's office as intake  
4 specialists for complaints submitted to the ombudsman's office.

5 (d) Personnel and administrative costs of the ombudsman's  
6 office shall be funded by the condominium education trust fund  
7 and assessments collected for this purpose under chapters 421I  
8 and 421J.

9 (e) The salary of the ombudsman shall be determined by the  
10 director. The ombudsman, complaints and enforcement officers,  
11 intake specialists, and other personnel shall be included in any  
12 benefits program generally applicable to officers and employees  
13 of the State.

14 **§ -4 Ombudsman; powers and duties; immunity from**  
15 **liability.** (a) The ombudsman shall:

16 (1) Have the power to establish rules and procedures for  
17 the operation of the office that shall include  
18 receiving and processing complaints and requests for  
19 dispute intervention; conducting investigations;  
20 enforcement, including fines and penalties; and  
21 reporting the findings of the office; provided that





- 1 the ombudsman shall not levy fees for the submission  
2 or investigation of complaints or requests for dispute  
3 intervention;
- 4 (2) Develop educational classes and required  
5 certifications for all members of a homeowner  
6 association board to ensure that they are aware of  
7 their responsibilities and duties and are familiar  
8 with this chapter, other relevant statutes and  
9 administrative rules, and their governing documents;
- 10 (3) In conjunction with the department, and using funds  
11 from the condominium education trust fund and  
12 assessments collected for this purpose under chapters  
13 421I and 421J, educate the public and entities  
14 required to be registered or certified under homeowner  
15 association laws;
- 16 (4) Have access to and use of all files and records of the  
17 department;
- 18 (5) Act as a liaison between unit owners, homeowner  
19 association boards, board members, homeowner  
20 association management, managing agents and their  
21 employees, and other affected parties;



- 1 (6) Act as a neutral resource for the rights and  
2 responsibilities of unit owners, homeowner  
3 associations, boards of directors, board members,  
4 managers, and any affected parties to encourage and  
5 facilitate voluntary meetings with and between these  
6 entities when meetings may assist in resolving a  
7 dispute prior to any party submitting a formal request  
8 for dispute intervention;
- 9 (7) Assist unit owners in understanding their rights and  
10 the processes available to them according to the laws  
11 and rules governing homeowner associations;
- 12 (8) Respond to general inquiries, make recommendations, or  
13 give guidance as necessary to assist unit owners;
- 14 (9) Make available, either separately or through an  
15 existing website, or both, information concerning  
16 homeowner associations and any additional information  
17 the ombudsman may deem appropriate and non-  
18 confidential;
- 19 (10) Coordinate and assist in the preparation and adoption  
20 of educational and reference material and endeavor to



- 1           make known to the largest possible audience the  
2           availability of these resources;
- 3       (11) Receive written requests for dispute intervention;
- 4       (12) Investigate and assist in resolving disputes brought  
5           by unit owners, homeowner associations, boards of  
6           directors, and board members, pursuant to section -  
7           5;
- 8       (13) Investigate acts that may be:
- 9           (A) Contrary to law or a homeowner association's  
10           governing rules;
- 11          (B) Unreasonable, unfair, oppressive, retaliatory, or  
12           discriminatory as administered or under the  
13           circumstances;
- 14          (C) Based on a mistake of fact;
- 15          (D) Based on improper or irrelevant grounds;
- 16          (E) Unaccompanied by an adequate statement of  
17           reasons; or
- 18          (F) Otherwise erroneous;
- 19       (14) Subject to the privileges that witnesses have in the  
20           courts of the State, have the authority to:



- 1 (A) Compel at a specified time and place, by a  
2 subpoena, the appearance and sworn testimony of  
3 any person whom the ombudsman reasonably believes  
4 may have information relating to a matter under  
5 investigation; and
- 6 (B) Compel any person to produce documents, records,  
7 and information the ombudsman reasonably believes  
8 may relate to a matter under investigation;
- 9 (15) Be authorized to bring suit in an appropriate state  
10 court to enforce the powers in paragraph (14);
- 11 (16) Provide advisory opinions upon request from unit  
12 owners or other affected parties;
- 13 (17) Provide recommendations to the director if the  
14 ombudsman finds that:
- 15 (A) The matter should be further considered by the  
16 department;
- 17 (B) A statute or rule should be amended or repealed;  
18 or
- 19 (C) Other action should be taken by the department;
- 20 (18) Within a reasonable time after providing  
21 recommendations to the director pursuant to paragraph



- 1 (17), the ombudsman may submit a report to the  
2 governor or the legislature or publish the report,  
3 including any reply by the department, and notify the  
4 complainant of the actions taken by the ombudsman and  
5 the department;
- 6 (19) Ensure that homeowner association members have access  
7 to the services provided through the ombudsman's  
8 office and that homeowner association members receive  
9 responses from the ombudsman's office within thirty  
10 days of the member's inquiry;
- 11 (20) Maintain publicly available data on inquiries and  
12 complaints received, types of assistance requested,  
13 notices of final decisions and actions taken, and  
14 disposition of matters;
- 15 (21) Monitor changes in federal and state laws relating to  
16 homeowner associations;
- 17 (22) Assist unit owners with disputes concerning homeowner  
18 association elections or meetings, including  
19 recommending that the department pursue an enforcement  
20 action in any matter where the ombudsman has



1 reasonable cause to believe that election misconduct  
2 has occurred, pursuant to section -10;  
3 (23) Have the authority to remove from the board any board  
4 member of a homeowner association who is found to have  
5 committed wilful misconduct in violation of any laws  
6 or the homeowner association's governing documents;  
7 (24) Provide to the governor and the public an annual  
8 report that includes the number and types of requests  
9 for dispute intervention submitted to the ombudsman's  
10 office and their disposition, and any suggestions for  
11 policy or legislation the ombudsman's office deems  
12 necessary to more quickly and efficiently resolve  
13 disputes involving unit owners; and  
14 (25) Adopt rules pursuant to chapter 91 necessary to carry  
15 out the purposes of this chapter.  
16 (b) No proceeding or decision of the ombudsman may be  
17 reviewed by any court unless the proceeding or decision  
18 contravenes this chapter. The ombudsman shall have the same  
19 immunities from civil and criminal liability as a judge of the  
20 State. The ombudsman and the staff of the ombudsman's office  
21 shall not testify in any court concerning matters coming to



1 their attention in the exercise of their official duties except  
2 as may be necessary to enforce this chapter.

3       **§ -5 Request for dispute intervention.** (a) Except as  
4 otherwise provided in this section, a unit owner or homeowner  
5 association, by its board members, who is a party to a dispute  
6 involving the interpretation or enforcement of the homeowner  
7 association's governing documents, including the declaration,  
8 bylaws, and house rules; chapter 514B, 421I, or 421J, as  
9 applicable; or any other law the homeowner association is  
10 obligated to follow, may submit with the ombudsman's office a  
11 written request for dispute intervention setting forth the facts  
12 forming the basis of the dispute.

13       (b) Simultaneous with the submission of a dispute  
14 intervention request, a unit owner shall provide the homeowner  
15 association board, homeowner association management, or managing  
16 agent a copy of the request for dispute intervention. The  
17 notice shall be sent to the addressee by certified mail, return  
18 receipt requested, or by hand delivery with confirmation of  
19 delivery. The notice shall specify in reasonable detail:

20       (1) The nature of the dispute;



- 1           (2) Any violations of chapter 514B, 421I, or 421J, as  
2           applicable, the homeowner association governing  
3           documents, or any other law or regulation the  
4           homeowner association is obligated to follow;
- 5           (3) Any alleged damages that resulted from the dispute;  
6           and
- 7           (4) Any proposed corrective action to resolve the dispute.
- 8           (c) A dispute intervention request submitted to the  
9           ombudsman's office pursuant to this section shall be on a form  
10          prescribed by the ombudsman's office and accompanied by evidence  
11          that:
- 12           (1) The respondent has been given a reasonable opportunity  
13           to correct the dispute; and
- 14           (2) Reasonable efforts to resolve the dispute have failed.
- 15           (d) The ombudsman may impose a minimum fine of \$250  
16          against any person who knowingly submits a false or fraudulent  
17          dispute intervention request with the ombudsman's office.
- 18           (e) Legal representation is not required for dispute  
19          intervention by the ombudsman's office. Unit owners shall not  
20          be assessed any legal fees incurred by the homeowner  
21          association, board, board members, managing agent, or other





1 parties as a result of a dispute intervention request submitted  
2 to the ombudsman's office.

3       **§ -6 Enforcement by complaints and enforcement officers;**  
4 **dispute resolution assistance.** (a) Upon receipt of a dispute  
5 intervention request pursuant to section -5, the complaints  
6 and enforcement officer shall open an investigation into the  
7 dispute.

8       (b) The complaints and enforcement officer may interview  
9 parties and witnesses involved in the dispute and request the  
10 production of documents, records, and information pursuant to  
11 section 514B-154.5, or other evidence or documents that would be  
12 reasonably helpful in resolving the dispute. Participation by  
13 the complainant, board members, and the board shall be  
14 mandatory. A unit owner or board member who refuses to  
15 participate shall be subject to penalties and fines to be  
16 predetermined and published by the ombudsman. If the board  
17 determines not to participate, each board member voting not to  
18 participate shall be considered in violation of this chapter,  
19 shall be personally assessed a monetary fine, and may be removed  
20 from the board.



1 (c) The complaints and enforcement officer shall make  
2 recommendations, give guidance, or issue an advisory opinion or  
3 decision to the unit owner or homeowner association as the  
4 complaints and enforcement officer deems necessary.

5 (d) If the complaints and enforcement officer determines  
6 that a homeowner association or board is at fault in a dispute,  
7 the homeowner association or board shall be responsible for any  
8 legal fees, costs, expenses, interest, or fines levied against  
9 the unit owner involved in the dispute.

10 (e) The complaints and enforcement officer may impose a  
11 minimum fine of \$250 against any person who knowingly submits  
12 false or fraudulent information to the ombudsman's office,  
13 wilfully hinders the lawful actions of the ombudsman or the  
14 staff of the ombudsman's office, or wilfully refuses to comply  
15 with the lawful demands of the ombudsman or the staff of the  
16 ombudsman's office.

17 (f) If the parties are unable to reach an agreement under  
18 this section or if a party does not agree with the decision of  
19 the complaints and enforcement officer, a party may request a  
20 contested case hearing with the ombudsman's office that will be  
21 presided over by the ombudsman. Participation in a contested



1 case hearing by the complainant, board members, and the board  
2 shall be mandatory.

3 (g) Any party who wishes to request a contested case  
4 hearing shall submit a written request with the ombudsman's  
5 office within thirty days after receipt of a copy of the  
6 complaints and enforcement officer's decision.

7 § -7 **Contested case hearing.** (a) A contested case  
8 hearing shall be conducted by the ombudsman pursuant to chapter  
9 91 and any rules adopted by the ombudsman's office; provided  
10 that if there is no dispute as to the facts involved in a  
11 particular matter, the ombudsman may permit the parties to  
12 proceed by memoranda of law in lieu of a hearing, unless the  
13 procedure would unduly burden any party or would otherwise not  
14 serve the ends of justice.

15 (b) The ombudsman shall not be bound by the rules of  
16 evidence when conducting a hearing to determine whether a  
17 violation of this chapter has occurred. The standard of proof  
18 required shall be a preponderance of the evidence.

19 (c) A record shall be made of the proceeding.



1 (d) All parties shall be afforded a full opportunity to  
2 engage in discovery and present evidence and argument on the  
3 issues involved.

4 (e) If a hearing is held or a review by memoranda of law  
5 is conducted, a decision shall be rendered by the ombudsman's  
6 office and promptly delivered to each party by certified mail.  
7 Any party adversely affected by the decision may submit written  
8 exceptions to the ombudsman's office within fifteen days after  
9 receipt of the decision.

10 (f) As expeditiously as possible after the close of the  
11 hearing but not before any party adversely affected has had the  
12 opportunity to submit a written exception, the ombudsman shall  
13 issue a decision together with separate findings of fact and  
14 conclusions of law regarding whether a violation of this part  
15 has occurred. Any final decision made by the ombudsman shall be  
16 binding on all parties.

17 § -8 **Fines; fees.** Any fine or fee collected pursuant to  
18 this chapter shall be deposited into the ombudsman's office  
19 special fund.



1           **§ -9 Ombudsman's office special fund.** (a) There is  
2 established an ombudsman's office special fund into which shall  
3 be deposited the following moneys:

4           (1) Administrative penalties, fines, and other charges  
5           collected under this chapter or any rule adopted  
6           pursuant to this chapter;

7           (2) One hundred per cent of all fees required by chapter  
8           514B to be deposited into the condominium education  
9           trust fund;

10          (3) Fees and assessments collected for administrative  
11          costs, personnel, and related equipment and materials  
12          of the ombudsman's office under chapters 421I and  
13          421J.

14          (b) All interest earned or accrued on moneys deposited  
15 into the ombudsman's office special fund shall become a part of  
16 the fund.

17          (c) The ombudsman's office shall adopt rules in accordance  
18 with chapter 91 for the purposes of this section.

19           **§ -10 Homeowner association election monitoring.**

20 Fifteen per cent of the total common interests in a homeowner  
21 association or six unit owners, whichever is greater, may



1 petition the ombudsman to appoint an election monitor to attend  
2 the annual meeting of the unit owners and oversee the election  
3 of directors. The ombudsman shall appoint an employee of the  
4 ombudsman's office, one or more persons specializing in  
5 homeowner association election monitoring, or an attorney  
6 licensed to practice in the State as the election monitor. All  
7 costs associated with the election monitoring process shall be  
8 paid by the homeowner association. The ombudsman's office shall  
9 adopt rules establishing procedures for the appointment of  
10 election monitors and the scope and extent of the monitor's role  
11 in the election process."

12 PART III

13 SECTION 3. Chapter 421I, Hawaii Revised Statutes, is  
14 amended by adding two new sections to be appropriately  
15 designated and to read as follows:

16 "§421I-A Board members; education requirement. Every  
17 existing member of the board of directors shall take the  
18 educational classes established by the ombudsman and obtain a  
19 certificate of satisfactory completion within three months of  
20 the classes being made available by the ombudsman. Every new  
21 member of the board of directors shall take the educational



1 classes established by the ombudsman and obtain a certificate of  
2 satisfactory completion within three months of acceptance to the  
3 board. The classes and certification requirement shall be  
4 structured to ensure the member is aware of the member's  
5 responsibilities and duties and familiar with this chapter,  
6 other relevant statutes and administrative rules, and the  
7 corporation's governing documents. The educational classes  
8 shall be completed by each board member at least once every  
9 three years. The board members' certificates of satisfactory  
10 completion shall be available for inspection by members of the  
11 applicable corporation.

12 **§421I-B Assessments for ombudsman's office.** The  
13 corporation shall collect as a common expense of its tenant  
14 shareholders an assessment for administrative costs, personnel,  
15 and related equipment and materials of the ombudsman's office,  
16 to be borne proportionately with condominium associations and  
17 planned community associations, the share of which shall be  
18 determined by the department of commerce and consumer affairs.  
19 All assessments collected for this purpose shall be deposited  
20 into the ombudsman's office special fund."



1 SECTION 4. Section 421I-1, Hawaii Revised Statutes, is  
2 amended to read as follows:

3 "~~[§]421I-1~~]~~—Cooperative housing corporation; defined.]~~

4 Definitions. As used in this chapter, unless otherwise  
5 indicated by the context~~[, "corporation"]~~:

6 "Corporation" means a cooperative housing corporation that:

- 7 (1) Has one and only one class of stock outstanding;
- 8 (2) Allows each tenant shareholder to occupy a dwelling  
9 unit for dwelling purposes solely by reason of the  
10 tenant shareholder's ownership of stock in the  
11 corporation;
- 12 (3) Does not allow a shareholder to receive, either  
13 conditionally or unconditionally, any distributions  
14 from the corporation except when there is a complete  
15 or partial liquidation of the corporation; provided  
16 that this paragraph does not apply to earnings and  
17 profits of the corporation; and
- 18 (4) Has eighty per cent or more of the gross income for  
19 the taxable year in which taxes are paid or incurred  
20 pursuant to 26 United States Code section 216(A)  
21 derived from tenant shareholders.





1        "Ombudsman's office" means the ombudsman's office for  
2 homeowner associations established pursuant to section -2."

3        SECTION 5. Section 421I-3, Hawaii Revised Statutes, is  
4 amended by amending subsections (a) and (b) to read as follows:

5        "(a) A meeting of the corporation for the purpose of  
6 electing the board of directors shall be held [~~not~~] no later  
7 than one hundred eighty days after the first conveyance of a  
8 dwelling unit to a shareholder, if at least forty per cent of  
9 the dwelling units have been conveyed by that time. If forty  
10 per cent of the dwelling units have not been conveyed within one  
11 year after the first conveyance, the meeting of the corporation  
12 may be held upon the call of the owners of at least ten per cent  
13 of the shares by a petition presented to the secretary of the  
14 corporation.

15        (b) Every member of the board of directors shall be:

16        (1) A shareholder of the [~~cooperation;~~] corporation;

17        (2) A spouse of a shareholder; or

18        (3) A trust beneficiary, if the shareholder is a trustee."

19        SECTION 6. Section 421I-6, Hawaii Revised Statutes, is  
20 amended by amending subsections (c) and (d) to read as follows:



1           "(c) Financial statements, general ledgers, accounts  
2 receivable ledgers, accounts payable ledgers, check ledgers,  
3 insurance policies, contracts, invoices of the corporation for  
4 the current and prior year, and any documents regarding  
5 delinquencies of ninety days or more shall be available for  
6 examination by shareholders at no cost and at convenient hours  
7 at a place designated by the board; provided that shareholders  
8 shall pay for administrative costs associated with examinations  
9 in excess of [~~eight~~] twenty hours per year.

10           The board may require shareholders to furnish the  
11 corporation with an affidavit stating that the information is  
12 requested in good faith for the protection of the interests of  
13 the corporation, its shareholders, or both.

14           Copies of these items shall be provided to any shareholder  
15 upon the shareholder's request, if the shareholder pays a  
16 reasonable fee for duplicating, postage, stationery, and other  
17 administrative costs associated with handling the request.

18           (d) Shareholders may view proxies, tally sheets, ballots,  
19 shareholders' check-in lists, and the certificate of election  
20 for a period of thirty days following any corporation meeting;



1 provided that shareholders shall pay for administrative costs in  
2 excess of [~~eight~~] twenty hours per year.

3 The board may require shareholders to furnish to the  
4 corporation an affidavit stating that the information is  
5 requested in good faith for the protection of the interest of  
6 the corporation, its shareholders, or both.

7 Proxies and ballots may be destroyed following the thirty-  
8 day period. Copies of tally sheets, shareholders' check-in  
9 lists, and the certificates of election from the most recent  
10 corporation meeting shall be provided to any shareholder upon  
11 the shareholder's request, if the shareholder pays a reasonable  
12 fee for duplicating, postage, stationery, and other  
13 administrative costs associated with handling the request."

14 SECTION 7. Section 421I-8, Hawaii Revised Statutes, is  
15 amended by amending subsection (b) to read as follows:

16 "(b) As used in this section, "assessments for common  
17 expenses" means any amounts collected from shareholders  
18 [~~pursuant~~]:

19 (1) Pursuant to the terms of the corporation's bylaws,  
20 articles of incorporation, or proprietary leases, for  
21 the operation, maintenance, management, repair,



1 replacement, and improvement of the land, buildings,  
 2 and any other real or personal property owned or  
 3 leased by the corporation[-]; and

4 (2) For costs associated with the ombudsman's office  
 5 pursuant to section 421I-B."

6 SECTION 8. Section 421I-9, Hawaii Revised Statutes, is  
 7 amended to read as follows:

8 "§421I-9 ~~[Mediation and arbitration of disputes.]~~ Dispute  
 9 intervention. At the request of any party, any dispute

10 concerning or involving one or more shareholders and a  
 11 corporation, its board of directors, managing agent, resident  
 12 manager, or one or more other shareholders relating to the  
 13 interpretation, application, or enforcement of this chapter or  
 14 the corporation's articles of incorporation, bylaws, or rules  
 15 adopted in accordance with its bylaws shall be submitted [~~first~~  
 16 ~~to mediation. When all reasonable efforts for mediation have~~  
 17 ~~been made and the dispute is not settled either in conference~~  
 18 ~~between the parties or through mediation, the dispute shall be~~  
 19 ~~submitted to arbitration in the same manner and subject to the~~  
 20 ~~same requirements, to the extent practicable, which now apply to~~  
 21 ~~condominiums under section 514B-162.]~~ to the ombudsman's office



1 as a request for dispute intervention pursuant to section -5.  
 2 The process for dispute intervention under sections -5, -  
 3 6, and -7 shall thereafter apply."

4 SECTION 9. Section 421I-10, Hawaii Revised Statutes, is  
 5 amended to read as follows:

6 "[+]§421I-10[+] **Applicability of other laws.** Nothing in  
 7 this chapter shall be construed to relieve any corporation from  
 8 compliance with or being subject to any other applicable law[-],  
 9 including compliance with any applicable requirements of the  
 10 ombudsman's office for homeowner associations."

11 PART IV

12 SECTION 10. Chapter 421J, Hawaii Revised Statutes, is  
 13 amended by adding two new sections to be appropriately  
 14 designated and to read as follows:

15 "§421J- **Board members; education requirement.** Every  
 16 existing member of the board of directors shall take the  
 17 educational classes established by the ombudsman and obtain a  
 18 certificate of satisfactory completion within three months of  
 19 the classes being made available by the ombudsman. Every new  
 20 member of the board of directors shall take the educational  
 21 classes established by the ombudsman and obtain a certificate of



1 satisfactory completion within three months of acceptance to the  
2 board. The classes and certification requirement shall be  
3 structured to ensure the member is aware of the member's  
4 responsibilities and duties and familiar with this chapter,  
5 other relevant statutes and administrative rules, and the  
6 corporation's governing documents. The educational classes  
7 shall be completed by each board member at least once every  
8 three years. The board members' certificates of satisfactory  
9 completion shall be available for inspection by members of the  
10 applicable association.

11 §421J- Assessments for ombudsman's office. The  
12 association shall collect an assessment for administrative  
13 costs, personnel, and related equipment and materials of the  
14 ombudsman's office, to be borne proportionately with condominium  
15 associations and cooperative housing corporations, the share of  
16 which shall be determined by the department of commerce and  
17 consumer affairs. All assessments collected for this purpose  
18 shall be deposited into the ombudsman's office special fund."

19 SECTION 11. Section 421J-2, Hawaii Revised Statutes, is  
20 amended by adding a new definition to be appropriately inserted  
21 and to read as follows:



1 "Ombudsman's office" means the ombudsman's office for  
2 homeowner associations established pursuant to section -2."

3 SECTION 12. Section 421J-10, Hawaii Revised Statutes, is  
4 amended to read as follows:

5 **"~~421J-10~~ Attorneys' fees and expenses of**  
6 **enforcement.** (a) If the association or the board is involved  
7 in a dispute intervention through the ombudsman's office  
8 pursuant to section -5, no special assessment related to the  
9 dispute, including association attorneys' fees, shall be  
10 assessed or collected from unit owners until the ombudsman's  
11 office has completed an investigation and rendered a final  
12 decision. If the final decision is in favor of the unit owner,  
13 any and all assessments, fines, costs, expenses, interest, and  
14 legal fees improperly assessed to the unit owner shall be  
15 reversed. Any board member of an association who is found to  
16 have committed wilful misconduct in violation of any laws or the  
17 governing documents shall be removed from the association board  
18 by the authority of the ombudsman.

19 ~~[(a) All]~~ (b) If no request for dispute intervention is  
20 made, all costs and expenses, including reasonable attorneys'  
21 fees, incurred by or on behalf of the association for:



1 (1) Collecting any delinquent assessments against any unit  
2 or the owner of any unit;  
3 (2) Foreclosing any lien on any unit; or  
4 (3) Enforcing any provision of the association documents  
5 or this chapter;  
6 against a member, occupant, tenant, employee of a member, or any  
7 other person who in any manner may use the property, shall be  
8 promptly paid on demand to the association by such person or  
9 persons; provided that if the association is not the prevailing  
10 party, all costs and expenses, including reasonable attorneys'  
11 fees, incurred by any such person or persons as a result of the  
12 action of the association, shall be promptly paid on demand to  
13 the person by the association. The reasonableness of any  
14 attorney's fees paid by a person or by an association as a  
15 result of an action pursuant to paragraph (2) shall be  
16 determined by the court.

17 [~~b~~] (c) If any member is the prevailing party in any  
18 action against an association~~[7]~~ pursuant to subsection (b), any  
19 of its officers or directors, or its board of directors to  
20 enforce any provision of the association documents or this  
21 chapter, then all reasonable and necessary expenses, costs, and





1 attorneys' fees incurred by the member shall be awarded to the  
2 member; provided that no such award shall be made in any  
3 derivative action unless:

4 (1) The member first shall have demanded and allowed  
5 reasonable time for the board of directors to pursue  
6 an enforcement action; or

7 (2) The member demonstrates to the satisfaction of the  
8 court that a demand for enforcement made to the board  
9 of directors would have been fruitless.

10 If a member is not the prevailing party in any court action  
11 against an association[7] pursuant to subsection (b), any of its  
12 officers or directors, or its board of directors, to enforce any  
13 provision of the association documents or this chapter, then all  
14 reasonable and necessary expenses, costs, and attorneys' fees  
15 incurred by the association shall be awarded to the association,  
16 unless the action was filed in small claims court, or, prior to  
17 filing the action in a higher court, the owner has first  
18 submitted the claim to [~~mediation~~] dispute intervention pursuant  
19 to section 421J-13, and made a good faith effort to resolve the  
20 dispute under any of those procedures.



1        [~~(e) Nothing~~] (d) If no request for dispute intervention  
 2 is made, nothing in this section shall be construed to prohibit  
 3 the board of directors from authorizing the use of a collection  
 4 agency."

5        SECTION 13. Section 421J-10.5, Hawaii Revised Statutes, is  
 6 amended by amending subsections (c) and (d) to read as follows:

7        "(c) Except as provided in section 667-92(c), no unit  
 8 owner shall withhold any assessment claimed by the association.  
 9 A unit owner who disputes the amount of an assessment may  
 10 request a written statement clearly indicating:

- 11        (1) The amount of regular and special assessments included
- 12                in the assessment, including the due date of each
- 13                amount claimed;
- 14        (2) The amount of any penalty, late fee, lien filing fee,
- 15                and any other charge included in the assessment;
- 16        (3) The amount of attorneys' fees and costs, if any,
- 17                included in the assessment;
- 18        (4) That under Hawaii law, a unit owner has no right to
- 19                withhold assessments for any reason;
- 20        (5) That a unit owner has a right to [~~demand mediation~~]
- 21                request a dispute intervention pursuant to -5 to



1 resolve disputes about the amount or validity of an  
2 association's assessment; provided that, if required  
3 by chapter \_\_\_\_\_ or the ombudsman, the unit owner  
4 immediately pays the assessment in full and keeps  
5 assessments current; and

6 (6) That payment in full of the assessment does not  
7 prevent the unit owner from contesting the assessment  
8 or receiving a refund of amounts not owed.

9 Nothing in this section shall limit the rights of a unit owner  
10 to the protection of all fair debt collection procedures  
11 mandated under federal and state law.

12 (d) A unit owner who pays an association the full amount  
13 claimed by the association may file a claim against the  
14 association in court, including small claims court, or require  
15 the association to [~~mediate~~] participate in dispute intervention  
16 under section 421J-13 to resolve any disputes concerning the  
17 amount or validity of the association's claim. If the unit  
18 owner and the association are unable to resolve the dispute  
19 through [~~mediation,~~] the request for intervention procedures set  
20 forth in sections -5, -6, and -7, either party may file  
21 for relief with a court; provided that a unit owner may only



1 file for relief in court if all amounts claimed by the  
2 association are paid in full on or before the date of filing.  
3 If the unit owner fails to keep all association assessments  
4 current during the court hearing, the association may ask the  
5 court to temporarily suspend the proceedings. If the unit owner  
6 pays all association assessments within thirty days of the date  
7 of suspension, the unit owner may ask the court to recommence  
8 the proceedings. If the unit owner fails to pay all association  
9 assessments by the end of the thirty-day period, the association  
10 may ask the court to dismiss the proceedings. The unit owner  
11 shall be entitled to a refund of any amounts paid to the  
12 association that are not owed."

13 SECTION 14. Section 421J-11, Hawaii Revised Statutes, is  
14 amended to read as follows:

15 "[~~§~~§421J-11] **Applicability of other laws.** Nothing in  
16 this chapter shall be construed to exempt any association or  
17 person from compliance with any applicable law, including any  
18 applicable requirements of the ombudsman's office, or subject  
19 any association or person to any other applicable law; provided  
20 that in the event of a conflict between any such law and this  
21 chapter, this chapter shall govern."



1 SECTION 15. Section 421J-13, Hawaii Revised Statutes, is  
2 amended to read as follows:

3 "~~[§]421J-13[§]—Mediation of disputes.] Dispute~~  
4 intervention. (a) At the request of any party, any dispute  
5 concerning or involving one or more members and an association,  
6 its board of directors, managing agent, manager, or one or more  
7 other members relating to the interpretation, application, or  
8 enforcement of this chapter or the association documents, shall  
9 ~~[first]~~ be submitted to ~~[mediation.]~~ the ombudsman's office as a  
10 request for dispute intervention pursuant to section -5. The  
11 process for dispute intervention under sections -5, -6,  
12 and -7 shall thereafter apply.

13 (b) Nothing in subsection (a) shall be interpreted to  
14 mandate ~~[the mediation]~~ the submittal of a request for dispute  
15 intervention to the ombudsman's office of any dispute involving:

- 16 (1) Actions seeking equitable relief involving threatened  
17 property damage or the health or safety of association  
18 members or any other person;
- 19 (2) Actions to collect assessments;
- 20 (3) Personal injury claims; or

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

9 ~~[(c) If any mediation under this section is not completed~~  
10 ~~within two months from commencement, no further mediation shall~~  
11 ~~be required unless agreed to by the association and the~~  
12 ~~member.]"~~

13 PART V

14 SECTION 16. Chapter 514B, Hawaii Revised Statutes, is  
15 amended by adding a new section to part VI to be appropriately  
16 designated and to read as follows:

17 "§514B- Board members; education requirement. Every  
18 existing member of a board shall take the educational classes  
19 established by the ombudsman and obtain a certificate of  
20 satisfactory completion within three months of the classes being  
21 made available by the ombudsman. Every new member of a board



1 shall take the educational classes established by the ombudsman  
 2 and obtain a certificate of satisfactory completion within three  
 3 months of acceptance to the board. The classes and  
 4 certification requirement shall be structured to ensure the  
 5 member is aware of the member's responsibilities and duties and  
 6 familiar with this chapter, other relevant statutes and  
 7 administrative rules, and the condominium's governing documents.  
 8 The educational classes shall be completed by each board member  
 9 at least once every three years. The board members'  
 10 certificates of satisfactory completion shall be available for  
 11 inspection by members of the applicable association."

12 SECTION 17. Section 514B-3, Hawaii Revised Statutes, is  
 13 amended by adding three new definitions to be appropriately  
 14 inserted and to read as follows:

15 "Complaints and enforcement officer" means the complaints  
 16 and enforcement officer established pursuant to section -3.

17 "Intake specialist" means the intake specialist established  
 18 pursuant to section -3.

19 "Ombudsman's office" means the ombudsman's office  
 20 established pursuant to section -2."



1 SECTION 18. Section 514B-68, Hawaii Revised Statutes, is  
2 amended to read as follows:

3 **"§514B-68 Power to enjoin.** Whenever the commission or  
4 ombudsman's office believes from satisfactory evidence that any  
5 person or entity has violated this part, part V, section  
6 514B-103, 514B-132, 514B-134, 514B-149, sections 514B-152 to  
7 514B-154, section 514B-154.5, chapter , or the rules of the  
8 commission adopted pursuant thereto, [~~it~~] the commission or  
9 ombudsman's office may conduct [~~an~~] a civil or criminal  
10 investigation of the matter and bring an action against the  
11 person or entity in any court of competent jurisdiction on  
12 behalf of the State to enjoin the person or entity from  
13 continuing the violation or doing any acts in furtherance  
14 thereof."

15 SECTION 19. Section 514B-71, Hawaii Revised Statutes, is  
16 amended to read as follows:

17 **"§514B-71 Condominium education trust fund.** (a) The  
18 commission shall establish a condominium education trust fund  
19 that the commission and ombudsman's office shall use for  
20 educational purposes. Educational purposes shall include  
21 financing or promoting:





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

5 (2) The improvement and more efficient administration of  
6 associations; and

7 (3) Expeditious and inexpensive procedures for resolving  
8 association disputes[~~7~~

9 ~~(4) Support for mediation of condominium related disputes;~~  
10 ~~and~~

11 ~~(5) Support for voluntary binding arbitration between~~  
12 ~~parties in condominium related disputes, pursuant to~~  
13 ~~section 514B-162.5].~~

14 (b) The commission shall use all moneys in the condominium  
15 education trust fund for purposes consistent with subsection

16 (a) [~~7~~]; provided that one hundred per cent of the fees required  
17 by chapter to be deposited into the trust fund shall be

18 transferred to the ombudsman's office special fund established  
19 under section -9 for use by the ombudsman's office. Any law

20 to the contrary notwithstanding, the commission may make a  
21 finding that a fee adjustment is appropriate and adjust the fees



1 paid by associations to regulate the fund balance to an  
2 appropriate level to maintain a reasonable relation between the  
3 fees generated and the cost of services rendered by the  
4 condominium education trust fund. For the purposes of finding  
5 that a fee adjustment is appropriate in order to maintain a  
6 reasonable relation between the fees generated and the cost of  
7 services rendered by the fund, the commission's review shall  
8 include the following:

- 9 (1) Frequency and timing of anticipated revenue to the  
10 fund;
- 11 (2) Identification of a reserve amount based on  
12 unanticipated revenue reductions and historical  
13 expenditures;
- 14 (3) Anticipated expenses paid, including recovery payouts  
15 during a biennial budget cycle;
- 16 (4) Unanticipated natural disasters or catastrophic  
17 weather events that may increase fund payments; and  
18 (5) Any statutory adjustments to fund payout amounts.

19 The balance of the fund shall not exceed a sum determined by the  
20 commission. The sum shall be determined by the commission  
21 biennially."



1 SECTION 20. Section 514B-72, Hawaii Revised Statutes, is  
2 amended by amending subsection (a) to read as follows:

3 "(a) Each project or association with more than five units  
4 shall pay to the department of commerce and consumer affairs:

5 (1) A condominium education trust fund fee within one year  
6 after the recordation of the purchase of the first  
7 unit or within thirty days of the association's first  
8 meeting, and thereafter, on or before June 30 of every  
9 odd-numbered year, as prescribed by rules adopted  
10 pursuant to chapter 91; and

11 (2) Beginning with the July 1, ~~[2015,]~~ 2023, biennium  
12 registration, an additional annual condominium  
13 education trust fund fee in an amount equal to the  
14 product of ~~[\$1.50]~~ \$12.50 times the number of  
15 condominium units included in the registered project  
16 or association to be dedicated to supporting  
17 ~~[mediation or voluntary binding arbitration of~~  
18 ~~condominium-related disputes.]~~ the ombudsman's office.

19 The additional condominium education trust fund fee  
20 shall total ~~[\$3]~~ \$25 per unit until the commission  
21 adopts rules pursuant to chapter 91. On June 30 of



1 every odd-numbered year, any unexpended additional  
2 amounts paid into the condominium education trust fund  
3 [~~and initially dedicated to supporting mediation or~~  
4 ~~voluntary binding arbitration of condominium related~~  
5 ~~disputes~~], as required by this paragraph, shall be  
6 used for educational purposes as provided in section  
7 514B-71(a) (1), (2), and (3)."

8 SECTION 21. Section 514B-73, Hawaii Revised Statutes, is  
9 amended to read as follows:

10 **"§514B-73 Condominium education trust fund; management.**

11 (a) The sums received by the commission for deposit in the  
12 condominium education trust fund pursuant to section 514B-72  
13 shall be held by the commission in trust for carrying out the  
14 purpose of the fund.

15 (b) The commission and the director of commerce and  
16 consumer affairs may use moneys in the condominium education  
17 trust fund collected pursuant to section 514B-72, and the rules  
18 of the commission to employ necessary personnel not subject to  
19 chapter 76 for additional staff support, to provide office  
20 space, and to purchase equipment, furniture, and supplies  
21 required by the commission to carry out its responsibilities



1 under this part. The ombudsman may use moneys in the  
2 condominium education trust fund collected pursuant to section  
3 514B-72 for educational purposes, including the establishment of  
4 educational classes and the necessary purchase of equipment and  
5 supplies required by the ombudsman's office to carry out its  
6 responsibilities under chapter .

7 (c) The moneys in the condominium education trust fund  
8 collected pursuant to section 514B-72[7] and the rules of the  
9 commission may be invested and reinvested together with the real  
10 estate education fund established under section 467-19 in the  
11 same manner as are the funds of the employees' retirement system  
12 of the State. The interest and earnings from these investments  
13 shall be deposited to the credit of the condominium education  
14 trust fund.

15 (d) The commission shall annually submit to the  
16 legislature, no later than twenty days prior to the convening of  
17 each regular session:

18 (1) A summary of the programs funded during the prior  
19 fiscal year and the amount of money in the fund,  
20 including a statement of which programs were directed



1 specifically at the education of condominium owners;  
2 and

3 (2) A copy of the budget for the current fiscal year,  
4 including summary information on programs that were  
5 funded or are to be funded and the target audience for  
6 each program. The budget shall include a line item  
7 reflecting the total amount collected from condominium  
8 associations.

9 (e) The ombudsman shall provide to the governor and the  
10 public an annual report stating the number and types of requests  
11 for dispute intervention submitted to the ombudsman's office and  
12 their disposition and recommendations for policy and legislation  
13 the ombudsman's office deems necessary to more quickly and  
14 efficiently resolve condominium disputes."

15 SECTION 22. Section 514B-104, Hawaii Revised Statutes, is  
16 amended by amending subsection (a) to read as follows:

17 "(a) Except as provided in section 514B-105, and subject  
18 to the provisions of the declaration and bylaws, the  
19 association, even if unincorporated, may:

20 (1) Adopt and amend the declaration, bylaws, and rules and  
21 regulations;



- 1           (2) Adopt and amend budgets for revenues, expenditures,  
2                   and reserves and collect assessments for common  
3                   expenses from unit owners, subject to section  
4                   514B-148;
- 5           (3) Hire and discharge managing agents and other  
6                   independent contractors, agents, and employees;
- 7           (4) Institute, defend, or intervene in litigation or  
8                   administrative proceedings in its own name on behalf  
9                   of itself or two or more unit owners on matters  
10                  affecting the condominium. For the purposes of  
11                  actions under chapter 480, associations shall be  
12                  deemed to be "consumers";
- 13          (5) Make contracts and incur liabilities;
- 14          (6) Regulate the use, maintenance, repair, replacement,  
15                  and modification of common elements;
- 16          (7) Cause additional improvements to be made as a part of  
17                  the common elements;
- 18          (8) Acquire, hold, encumber, and convey in its own name  
19                  any right, title, or interest to real or personal  
20                  property; provided that:



- 1 (A) Designation of additional areas to be common  
2 elements or subject to common expenses after the  
3 initial filing of the declaration or bylaws shall  
4 require the approval of at least sixty-seven per  
5 cent of the unit owners;
- 6 (B) If the developer discloses to the initial buyer  
7 in writing that additional areas will be  
8 designated as common elements whether pursuant to  
9 an incremental or phased project or otherwise,  
10 the requirements of this paragraph shall not  
11 apply as to those additional areas; and
- 12 (C) The requirements of this paragraph shall not  
13 apply to the purchase of a unit for a resident  
14 manager, which may be purchased [~~with the~~  
15 ~~approval of the board;~~] through a provision in  
16 the bylaws;
- 17 (9) Subject to section 514B-38, grant easements, leases,  
18 licenses, and concessions through or over the common  
19 elements and permit encroachments on the common  
20 elements;





- 1           (10) Impose and receive any payments, fees, or charges for  
2           the use, rental, or operation of the common elements,  
3           other than limited common elements described in  
4           section 514B-35(2) and (4), and for services provided  
5           to unit owners;
- 6           (11) Impose charges and penalties, including late fees and  
7           interest, for late payment of assessments and levy  
8           reasonable fines for violations of the declaration,  
9           bylaws, rules, and regulations of the association,  
10          either in accordance with the bylaws or, if the bylaws  
11          are silent, pursuant to a resolution adopted by the  
12          board that establishes a fining procedure that states  
13          the basis for the fine and allows an appeal to the  
14          board of the fine with notice and an opportunity to be  
15          heard and providing that if the fine is paid, the unit  
16          owner shall have the right to initiate a dispute  
17          resolution process [~~as provided~~] by [~~sections 514B-~~  
18          ~~161, 514B-162, or by filing a request for an~~  
19          ~~administrative hearing under a pilot program~~  
20          ~~administered by the department of commerce and~~  
21          ~~consumer affairs;~~] requesting dispute intervention or



- 1           dispute resolution assistance from the ombudsman's  
2           office pursuant to sections     -5,     -6, and     -7;
- 3       (12)   Impose reasonable charges for the preparation and  
4           recording of amendments to the declaration,  
5           documents requested for resale of units, or statements  
6           of unpaid assessments;
- 7       (13)   Provide for cumulative voting through a provision in  
8           the bylaws;
- 9       (14)   Provide for the indemnification of its officers,  
10          board, committee members, and agents, and maintain  
11          directors' and officers' liability insurance;
- 12       (15)   Assign its right to future income, including the right  
13          to receive common expense assessments, but only to the  
14          extent section 514B-105(e) expressly so provides;
- 15       (16)   Exercise any other powers conferred by the declaration  
16          or bylaws;
- 17       (17)   Exercise all other powers that may be exercised in  
18          this State by legal entities of the same type as the  
19          association, except to the extent inconsistent with  
20          this chapter;



- 1 (18) Exercise any other powers necessary and proper for the
- 2 governance and operation of the association; and
- 3 (19) By regulation, subject to sections     -5,    -6,
- 4 and    -7, and 514B-146, [514B-161, and 514B-162,]
- 5 require that disputes between the board and unit
- 6 owners or between two or more unit owners regarding
- 7 the condominium be submitted to [~~nonbinding~~
- 8 ~~alternative dispute resolution~~] the ombudsman's office
- 9 in the manner described in the regulation as a
- 10 prerequisite to commencement of a judicial
- 11 proceeding."

12 SECTION 23. Section 514B-105, Hawaii Revised Statutes, is

13 amended to read as follows:

14 **"§514B-105 Association; limitations on powers.** (a) The

15 declaration and bylaws [~~may~~] shall not impose limitations on the

16 power of the association to deal with the developer [~~which~~] that

17 are more restrictive than the limitations imposed on the power

18 of the association to deal with other persons.

19 (b) Unless otherwise permitted by the declaration, bylaws,

20 or this chapter, an association may adopt rules and regulations



1 that affect the use of or behavior in units that may be used for  
2 residential purposes only to:

- 3 (1) Prevent any use of a unit [~~which~~] that violates the  
4 declaration or bylaws;
- 5 (2) Regulate any behavior in or occupancy of a unit  
6 [~~which~~] that violates the declaration or bylaws or  
7 unreasonably interferes with the use and enjoyment of  
8 other units or the common elements by other unit  
9 owners; or
- 10 (3) Restrict the leasing of residential units to the  
11 extent those rules are reasonably designed to meet  
12 underwriting requirements of institutional lenders who  
13 regularly lend money secured by first mortgages on  
14 units in condominiums or regularly purchase those  
15 mortgages.

16 Otherwise, the association [~~may~~] shall not regulate any use of  
17 or behavior in units by means of the rules and regulations.

18 (c) Any payments made by or on behalf of a unit owner  
19 shall first be applied to outstanding common expenses that are  
20 assessed to all unit owners in proportion to the common interest  
21 appurtenant to their respective units. Only after said



1 outstanding common expenses have been paid in full may the  
2 payments be applied to other charges owed to the association,  
3 including assessed charges to the unit such as ground lease  
4 rent, utility sub-metering, storage lockers, parking stalls,  
5 boat slips, insurance deductibles, and cable. After these  
6 charges are paid, other charges, including unpaid late fees,  
7 legal fees, fines, and interest, may be assessed in accordance  
8 with an application of payment policy adopted by the board;  
9 provided that if a unit owner has designated that any payment is  
10 for a specific charge that is not a common expense as described  
11 in this subsection, the payment may be applied in accordance  
12 with the unit owner's designation even if common expenses remain  
13 outstanding.

14 (d) No unit owner who requests legal or other information  
15 from the association, the board, the managing agent, or their  
16 employees or agents, shall be charged for the reasonable cost of  
17 providing the information unless the association notifies the  
18 unit owner that it intends to charge the unit owner for the  
19 reasonable cost. The association shall notify the unit owner in  
20 writing at least ten days prior to incurring the reasonable cost  
21 of providing the information, except that no prior notice shall



1 be required to assess the reasonable cost of providing  
2 information on delinquent assessments or in connection with  
3 proceedings to enforce the law or the association's governing  
4 documents.

5 After being notified of the reasonable cost of providing  
6 the information, the unit owner may withdraw the request, in  
7 writing. A unit owner who withdraws a request for information  
8 shall not be charged for the reasonable cost of providing the  
9 information.

10 (e) Subject to any approval requirements and spending  
11 limits contained in the declaration or bylaws, the association  
12 may authorize the board to borrow money for the repair,  
13 replacement, maintenance, operation, or administration of the  
14 common elements and personal property of the project, or the  
15 making of any additions, alterations, and improvements thereto;  
16 provided that the board shall make available any reports  
17 provided by licensed or certified professionals that document  
18 the necessity and urgency of that expenditure, provide to all  
19 unit owners a written notice of the purpose and use of the funds  
20 [is first sent to all unit owners and owners], and hold a  
21 special meeting to discuss the expenditure and review the



1 reports. Owners representing more than fifty per cent of the  
2 common interest shall vote [~~or~~] and give written consent to the  
3 borrowing. In connection with the borrowing, the board may  
4 grant to the lender the right to assess and collect monthly or  
5 special assessments from the unit owners and to enforce the  
6 payment of the assessments or other sums by statutory lien and  
7 foreclosure proceedings. The cost of the borrowing, including,  
8 without limitation, all principal, interest, commitment fees,  
9 and other expenses payable with respect to the borrowing or the  
10 enforcement of the obligations under the borrowing, shall be a  
11 common expense of the project. For purposes of this section,  
12 the financing of insurance premiums by the association within  
13 the policy period shall not be deemed a loan and no lease shall  
14 be deemed a loan if it provides that at the end of the lease the  
15 association may purchase the leased equipment for its fair  
16 market value.

17 (f) If the association or the board is involved in a  
18 dispute intervention through the ombudsman's office pursuant to  
19 section -5, no special assessment related to the dispute,  
20 including association attorneys' fees, shall be assessed or  
21 collected from unit owners until the ombudsman's office has



1 completed an investigation and rendered a final decision. If  
 2 the final decision is in favor of the unit owner, any and all  
 3 assessments, fines, costs, expenses, interest, and legal fees  
 4 improperly assessed to the unit owner shall be reversed. Any  
 5 board member who is found to have committed wilful misconduct in  
 6 violation of any laws or the governing documents shall be  
 7 removed from the board by the authority of the ombudsman."

8 SECTION 24. Section 514B-106, Hawaii Revised Statutes, is  
 9 amended by amending subsection (a) to read as follows:

10 "(a) Except as provided in the declaration, the bylaws,  
 11 subsection (b), or other provisions of this chapter, the board  
 12 may act in all instances on behalf of the association. In the  
 13 performance of their duties, officers and members of the board  
 14 shall owe the association a fiduciary duty and exercise the  
 15 degree of care and loyalty required of an officer or director of  
 16 a corporation organized under chapter 414D. Any violation by a  
 17 board or its officers or members of [~~the mandatory provisions of~~  
 18 ~~section 514B-161 or 514B-162~~] section -5, -6, or -7 may  
 19 constitute a violation of the fiduciary duty owed pursuant to  
 20 this subsection; provided that a board member may avoid  
 21 liability under this subsection by indicating in writing the





1 board member's disagreement with such board action or rescinding  
2 or withdrawing the violating conduct within forty-five days of  
3 the occurrence of the initial violation."

4 SECTION 25. Section 514B-146, Hawaii Revised Statutes, is  
5 amended as follows:

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

7 "(d) A unit owner who disputes the information in the  
8 written statement received from the association pursuant to  
9 subsection (c) may request a subsequent written statement that  
10 additionally informs the unit owner that:

- 11 (1) Under Hawaii law, a unit owner has no right to  
12 withhold common expense assessments for any reason;
- 13 (2) A unit owner has a right to [~~demand mediation or~~  
14 ~~arbitration~~] request dispute intervention to resolve  
15 disputes about the amount or validity of an  
16 association's common expense assessment; provided that  
17 the unit owner immediately pays the common expense  
18 assessment in full and keeps common expense  
19 assessments current;
- 20 (3) Payment in full of the common expense assessment shall  
21 not prevent the owner from contesting the common



1 expense assessment or receiving a refund of amounts  
2 not owed; and  
3 (4) If the unit owner contests any penalty or fine, late  
4 fee, lien filing fee, or other charges included in the  
5 assessment, except common expense assessments, the  
6 unit owner may [~~demand mediation~~] request dispute  
7 intervention as provided in subsection (g) prior to  
8 paying those charges."

9 2. By amending subsections (f) and (g) to read:

10 "(f) A unit owner who pays an association the full amount  
11 of the common expenses claimed by the association may file in  
12 small claims court or require the association to [~~mediate~~]  
13 participate in dispute intervention under the ombudsman's office  
14 to resolve any disputes concerning the amount or validity of the  
15 association's common expense claim. If the unit owner and the  
16 association are unable to resolve the dispute through  
17 [~~mediation,~~] dispute intervention under the ombudsman's office,  
18 either party may [~~file~~] submit a request for [~~arbitration under~~  
19 ~~section 514B-162;~~] a contested case hearing; provided that a  
20 unit owner may only [~~file~~] submit a request for [~~arbitration~~] a  
21 contested case hearing if all amounts claimed by the association



1 as common expenses are paid in full on or before the date of  
2 filing. If the unit owner fails to keep all association common  
3 expense assessments current during the [~~arbitration,~~] contested  
4 case hearing process, the association may ask the [~~arbitrator~~]  
5 ombudsman to temporarily suspend the [~~arbitration~~] proceedings.  
6 If the unit owner pays all association common expense  
7 assessments within thirty days of the date of suspension, the  
8 unit owner may ask the [~~arbitrator~~] ombudsman to recommence the  
9 [~~arbitration~~] proceedings. If the unit owner fails to pay all  
10 association common expense assessments by the end of the thirty-  
11 day period, the association may ask the [~~arbitrator~~] ombudsman  
12 to dismiss the [~~arbitration~~] proceedings. The unit owner shall  
13 be entitled to a refund of any amounts paid as common expenses  
14 to the association that are not owed.

15 (g) A unit owner who contests the amount of any attorneys'  
16 fees and costs, penalties or fines, late fees, lien filing fees,  
17 or any other charges, except common expense assessments, may  
18 make a demand in writing for [~~mediation~~] dispute intervention on  
19 the validity of those charges. The unit owner has thirty days  
20 from the date of the written statement requested pursuant to  
21 subsection (d) to [~~file demand for mediation~~] submit a request



1 for dispute intervention on the disputed charges, other than  
2 common expense assessments. If the unit owner fails to [file]  
3 submit a request for [mediation] dispute intervention within  
4 thirty days of the date of the written statement requested  
5 pursuant to subsection (d), the association may proceed with  
6 collection of the charges. If the unit owner makes a request  
7 for [mediation] dispute intervention within thirty days, the  
8 association shall be prohibited from attempting to collect any  
9 of the disputed charges until the association has participated  
10 in the [mediation. ~~The mediation shall be completed within~~  
11 ~~sixty days of the unit owner's request for mediation; provided~~  
12 ~~that if the mediation is not completed within sixty days or the~~  
13 ~~parties are unable to resolve the dispute by mediation, the~~  
14 ~~association may proceed with collection of all amounts due from~~  
15 ~~the unit owner for attorneys' fees and costs, penalties or~~  
16 ~~finer, late fees, lien filing fees, or any other charge that is~~  
17 ~~not imposed on all unit owners as a common expense.] dispute  
18 intervention. The dispute intervention shall be completed  
19 within sixty days of the unit owner's request for dispute  
20 intervention; however, a reasonable extension may be provided at  
21 the ombudsman's discretion."~~



1 SECTION 26. Section 514B-146.5, Hawaii Revised Statutes,  
2 is amended by amending subsection (a) to read as follows:

3 "(a) Any notice of default and intention to foreclose  
4 given by an association under section 667-92(a) shall, in  
5 addition to the requirements of that section, also include a  
6 statement that the unit owner may request [~~mediation~~] dispute  
7 intervention by delivering a written request for [~~mediation~~]  
8 dispute intervention to the association by certified mail,  
9 return receipt requested, or hand delivery within thirty days  
10 after service of a notice of default and intention to foreclose  
11 on the unit owner.

12 If the association does not receive a request for  
13 [~~mediation~~] dispute intervention within the thirty-day period,  
14 the association may proceed with nonjudicial or power of sale  
15 foreclosure, subject to all applicable provisions of this  
16 chapter and chapter 667. If the association receives a request  
17 for [~~mediation,~~] dispute intervention, as set forth in this  
18 subsection, from a unit owner within thirty days after service  
19 of a notice of default and intention to foreclose upon the unit  
20 owner, the association shall agree to [~~mediate~~] dispute  
21 intervention and shall be prohibited from proceeding with



1 nonjudicial or power of sale foreclosure until the association  
2 has participated in the [~~mediation~~] dispute intervention or the  
3 time period for completion of the [~~mediation~~] dispute  
4 intervention has elapsed. The [~~mediation~~] dispute intervention  
5 shall be completed within sixty days of the date upon which the  
6 unit owner delivers a request for [~~mediation upon~~] dispute  
7 intervention to the association; provided that if the  
8 [~~mediation~~] dispute intervention is not commenced or completed  
9 within sixty days or the parties are unable to resolve the  
10 dispute by [~~mediation,~~] dispute intervention, the association  
11 may proceed with nonjudicial or power of sale foreclosure,  
12 subject to all applicable provisions of this chapter and chapter  
13 667."

14 SECTION 27. Section 514B-154, Hawaii Revised Statutes, is  
15 amended as follows:

16 1. By amending subsections (b) and (c) to read:

17 "(b) Financial statements, general ledgers, the accounts  
18 receivable ledger, accounts payable ledgers, check ledgers,  
19 insurance policies, contracts, and invoices of the association  
20 for the duration those records are kept by the association and  
21 delinquencies of ninety days or more shall be available for



1 examination by unit owners at convenient hours at a place  
2 designated by the board; provided that:

3 (1) The board may require owners to furnish to the  
4 association a duly executed and acknowledged affidavit  
5 stating that the information is requested in good  
6 faith for the protection of the interests of the  
7 association, its members, or both; and

8 (2) Owners shall pay for administrative costs in excess of  
9 [~~eight~~] twenty hours per year.

10 Copies of these items shall be provided to any owner upon  
11 the owner's request; provided that the owner pays a reasonable  
12 fee for duplication, postage, stationery, and other  
13 administrative costs associated with handling the request.

14 (c) After any association meeting, and not earlier, unit  
15 owners shall be permitted to examine proxies, tally sheets,  
16 ballots, owners' check-in lists, and the certificate of  
17 election; provided that:

18 (1) Owners shall make a request to examine the documents  
19 within thirty days after the association meeting;

20 (2) The board may require owners to furnish to the  
21 association a duly executed and acknowledged affidavit



1           stating that the information is requested in good  
2           faith for the protection of the interest of the  
3           association or its members or both; and  
4           (3) Owners shall pay for administrative costs in excess of  
5           ~~eight~~ twenty hours per year.

6           The documents may be destroyed ninety days after the  
7           association meeting; provided that in the event of a contested  
8           election, the documents shall be retained until the contested  
9           election is resolved. Copies of tally sheets, owners' check-in  
10          lists, and the certificates of election from the most recent  
11          association meeting shall be provided to any owner upon the  
12          owner's request; provided that the owner pays a reasonable fee  
13          for duplicating, postage, stationery, and other administrative  
14          costs associated with handling the request."

15          2. By amending subsection (j) to read:

16          "(j) Any fee charged to a member to obtain copies of  
17          association records under this section shall be reasonable;  
18          provided that a reasonable fee shall include actual  
19          administrative and duplicating costs and shall not exceed \$1 per  
20          printed page, or portion thereof, except the fee for pages  
21          exceeding eight and one-half inches by fourteen inches may





1 exceed \$1 per printed page. Charges for electronic copies of  
2 documents shall be limited to reasonable and actual  
3 administrative costs and shall first be applied to the twenty  
4 free hours allocated to the association. A maximum \$5 charge is  
5 allowed for any electronic document requested."

6 SECTION 28. Section 514B-154.5, Hawaii Revised Statutes,  
7 is amended to read as follows:

8 **"§514B-154.5 Association documents to be provided. (a)**

9 Notwithstanding any other provision in the declaration, bylaws,  
10 or house rules, if any, the following documents, records, and  
11 information, whether maintained, kept, or required to be  
12 provided pursuant to this section or section 514B-152, 514B-153,  
13 or 514B-154, shall be made available to any unit owner and the  
14 owner's authorized agents by the managing agent, resident  
15 manager, board through a board member, or the association's  
16 representative:

- 17 (1) All financial and other records sufficiently detailed  
18 in order to comply with requests for information and  
19 disclosures related to the resale of units;
- 20 (2) An accurate copy of the declaration, bylaws, house  
21 rules, if any, master lease, if any, a sample original



- 1 conveyance document, and all public reports and any  
2 amendments thereto;
- 3 (3) Detailed, accurate records in chronological order of  
4 the receipts and expenditures affecting the common  
5 elements, specifying and itemizing the maintenance and  
6 repair expenses of the common elements and any other  
7 expenses incurred and monthly statements indicating  
8 the total current delinquent dollar amount of any  
9 unpaid assessments for common expenses;
- 10 (4) All records and the vouchers authorizing the payments  
11 and statements kept and maintained at the address of  
12 the project, or elsewhere within the State as  
13 determined by the board, subject to section 514B-152;
- 14 (5) All signed and executed agreements for managing the  
15 operation of the property, expressing the agreement of  
16 all parties, including but not limited to financial  
17 and accounting obligations, services provided, and any  
18 compensation arrangements, including any subsequent  
19 amendments;
- 20 (6) An accurate and current list of members of the  
21 condominium association and the members' current



1 addresses and the names and addresses of the vendees  
2 under an agreement of sale, if any. A copy of the  
3 list shall be available, at cost, to any unit owner or  
4 owner's authorized agent who furnishes to the managing  
5 agent, resident manager, or the board a duly executed  
6 and acknowledged affidavit stating that the list:

7 (A) Shall be used by the unit owner or owner's  
8 authorized agent personally and only for the  
9 purpose of soliciting votes or proxies or for  
10 providing information to other unit owners with  
11 respect to association matters; and

12 (B) Shall not be used by the unit owner or owner's  
13 authorized agent or furnished to anyone else for  
14 any other purpose;

15 (7) The association's most current financial statement, at  
16 no cost or on twenty-four-hour loan, at a convenient  
17 location designated by the board;

18 (8) Meeting minutes of the association, pursuant to  
19 section 514B-122;

20 (9) Meeting minutes of the board, including executive  
21 session records of voting results regarding the



1           imposition of special assessments, charges, and fines,  
2           including legal fees, pursuant to section 514B-126,  
3           which shall be:

4           (A) Available for examination by unit owners or  
5           owners' authorized agents at no cost or on  
6           twenty-four-hour loan at a convenient location at  
7           the project, to be determined by the board; or

8           (B) Transmitted to any unit owner or owner's  
9           authorized agent making a request for the minutes  
10          within fifteen days of receipt of the request by  
11          the owner or owner's authorized agent; provided  
12          that:

13           (i) The minutes shall be transmitted by mail,  
14           electronic mail transmission, or facsimile,  
15           by the means indicated by the owner or  
16           owner's authorized agent, if the owner or  
17           owner's authorized agent indicated a  
18           preference at the time of the request; and

19           (ii) The owner or owner's authorized agent shall  
20           pay a reasonable fee for administrative



1 costs associated with handling the request,  
2 subject to section 514B-105(d);

3 (10) Financial statements, general ledgers, the accounts  
4 receivable ledger, accounts payable ledgers, check  
5 ledgers, insurance policies, contracts, and invoices  
6 of the association for the duration those records are  
7 kept by the association, and any documents regarding  
8 delinquencies of ninety days or more shall be  
9 available for examination by unit owners or owners'  
10 authorized agents at convenient hours at a place  
11 designated by the board; provided that:

12 (A) The board may require unit owners or owners'  
13 authorized agents to furnish to the association a  
14 duly executed and acknowledged affidavit stating  
15 that the information is requested in good faith  
16 for the protection of the interests of the  
17 association, its members, or both; and

18 (B) Unit owners or owners' authorized agents shall  
19 pay for administrative costs in excess of [~~eight~~]  
20 twenty hours per year;



- 1       (11) Proxies, tally sheets, ballots, unit owners' check-in  
2             lists, and the certificate of election subject to  
3             section 514B-154(c);
- 4       (12) Copies of an association's documents, records, and  
5             information, whether maintained, kept, or required to  
6             be provided pursuant to this section or section  
7             514B-152, 514B-153, or 514B-154;
- 8       (13) A copy of the management contract from the entity that  
9             manages the operation of the property before the  
10            organization of an association;
- 11       (14) Other documents requested by a unit owner or owner's  
12            authorized agent in writing; provided that the board  
13            shall give written authorization or written refusal  
14            with an explanation of the refusal within thirty  
15            calendar days of receipt of a request for documents  
16            pursuant to this paragraph; and
- 17       (15) A copy of any contract, written job description, and  
18            compensation between the association and any person or  
19            entity retained by the association to manage the  
20            operation of the property on-site, including but not  
21            limited to the general manager, operations manager,



1 resident manager, or site manager; provided that  
2 personal information may be redacted from the contract  
3 copy, including but not limited to the manager's date  
4 of birth, age, signature, social security number,  
5 residence address, telephone number, non-business  
6 electronic mail address, driver's license number,  
7 Hawaii identification card number, bank account  
8 number, credit or debit card number, access code or  
9 password that would permit access to the manager's  
10 financial accounts, or any other information that may  
11 be withheld under state or federal law.

12 (b) Subject to section 514B-105(d), copies of the items in  
13 subsection (a) shall be provided to any unit owner or owner's  
14 authorized agent upon the owner's or owner's authorized agent's  
15 request; provided that the owner or owner's authorized agent  
16 pays a reasonable fee for duplication, postage, stationery, and  
17 other administrative costs associated with handling the request.

18 (c) Notwithstanding any provision in the declaration,  
19 bylaws, or house rules providing for another period of time, all  
20 documents, records, and information listed under subsection (a),  
21 whether maintained, kept, or required to be provided pursuant to



1 this section or section 514B-152, 514B-153, or 514B-154, shall  
2 be provided no later than thirty days after receipt of a unit  
3 owner's or owner's authorized agent's written request, unless a  
4 lesser time is provided pursuant to this section or section  
5 514B-152, 514B-153, or 514B-154, and except as provided in  
6 subsection (a) (14).

7 (d) Any documents, records, and information, whether  
8 maintained, kept, or required to be provided pursuant to this  
9 section or section 514B-152, 514B-153, or 514B-154, may be made  
10 available electronically to the unit owner or owner's authorized  
11 agent if the owner or owner's authorized agent requests such in  
12 writing.

13 (e) An association may comply with this section or section  
14 514B-152, 514B-153, or 514B-154 by making the required  
15 documents, records, and information available to unit owners or  
16 owners' authorized agents for download through an internet site,  
17 at the option of each unit owner or owner's authorized agent and  
18 at no cost to the unit owner or owner's authorized agent.

19 (f) Any fee charged to a unit owner or owner's authorized  
20 agent to obtain copies of the association's documents, records,  
21 and information, whether maintained, kept, or required to be





1 provided pursuant to this section or section 514B-152, 514B-153,  
2 or 514B-154, shall be reasonable; provided that a reasonable fee  
3 shall include actual administrative and duplicating costs and  
4 shall not exceed \$1 per printed page, or portion thereof, except  
5 that the fee for pages exceeding eight and one-half inches by  
6 fourteen inches may exceed \$1 per printed page. Charges for  
7 electronic copies of documents shall be limited to reasonable  
8 and actual administrative costs and shall first be applied to  
9 the twenty free hours allocated to the association. A maximum  
10 \$5 charge is allowed for any electronic document requested.

11 (g) Copies of the documents listed in subsection (a) shall  
12 be provided to the complaints and enforcement officer or  
13 ombudsman no later than thirty days after receipt of the  
14 complaints and enforcement officer's request or as determined by  
15 the complaints and enforcement officer upon a showing of good  
16 cause; provided that if the complaints and enforcement officer  
17 or ombudsman is denied access to any item in subsection (a), the  
18 complaints and enforcement officer or ombudsman may request the  
19 commission to conduct an investigation of the matter pursuant to  
20 section 514B-65.



1       ~~[(g)]~~ (h) This section shall apply to all condominiums  
2 organized under this chapter or any predecessor thereto.

3       ~~[(h) Nothing in this section shall be construed to create  
4 any new requirements for the release of documents, records, or  
5 information.]"~~

6       SECTION 29. Section 514B-157, Hawaii Revised Statutes, is  
7 amended to read as follows:

8       "~~[(+)§514B-157[(+)]~~ **Attorneys' fees, delinquent assessments,**  
9 **and expenses of enforcement.** (a) Fees for attorneys' services  
10 incurred by a board shall not be reimbursed by individual unit  
11 owners when the services are for the purposes of:

12       (1) Responding to written or oral inquiries, comments,  
13       complaints, or requests for dispute intervention by  
14       unit owners regarding condominium operations, property  
15       usage, board fiduciary duties, common elements, and  
16       resident actions;

17       (2) Expressing unit owners' intentions to challenge the  
18       existing declaration, bylaws, and rules of the  
19       association; or



1        (3) Participation in criminal defense resulting from unit  
2                    owners' allegations of wrongdoing based on the board's  
3                    performance of fiduciary responsibilities.

4        [~~a~~] (b) All costs and expenses, including reasonable  
5 attorneys' fees, incurred by or on behalf of the association  
6 for:

7            (1) Collecting any delinquent assessments against any  
8                    owner's unit;

9            (2) Foreclosing any lien thereon; or

10          (3) Enforcing any provision of the declaration, bylaws,  
11                    house rules, and this chapter, or the rules of the  
12                    real estate commission;

13 against an owner, occupant, tenant, employee of an owner, or any  
14 other person who may in any manner use the property, shall be  
15 promptly paid on demand to the association by such person or  
16 persons; provided that if the claims upon which the association  
17 takes any action are not substantiated, all costs and expenses,  
18 including reasonable attorneys' fees, incurred by any such  
19 person or persons as a result of the action of the association,  
20 shall be promptly paid on demand to such person or persons by  
21 the association[-]; provided further that if a unit owner



1 requests dispute intervention which initiates an investigation  
2 with the ombudsman's office, costs and expenses for the  
3 investigation shall be suspended until the complaints and  
4 enforcement officer completes the investigation and issues a  
5 decision on the matter.

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

13       (1) The owner first shall have demanded and allowed  
14             reasonable time for the board to pursue such  
15             enforcement; or

16       (2) The owner demonstrates to the satisfaction of the  
17             court that a demand for enforcement made to the board  
18             would have been fruitless.

19       If any claim by an owner is not substantiated in any court  
20 action against an association, any of its officers or directors,  
21 or its board to enforce any provision of the declaration,



1 bylaws, house rules, or this chapter, then all reasonable and  
2 necessary expenses, costs, and attorneys' fees incurred by an  
3 association shall be awarded to the association, unless before  
4 filing the action in court the owner has first submitted the  
5 claim to [~~mediation, or to arbitration under subpart D,~~] dispute  
6 intervention under the ombudsman's office and made a good faith  
7 effort to resolve the dispute [~~under any of those procedures~~]."

8 SECTION 30. Section 514B-163, Hawaii Revised Statutes, is  
9 amended to read as follows:

10 "[~~§~~514B-163] **Trial de novo and appeal.** (a) The  
11 submission of any dispute to [~~an arbitration under section 514B-~~  
12 ~~162]~~ the ombudsman's office shall in no way limit or abridge the  
13 right of any party to a trial de novo.

14 (b) Written demand for a trial de novo by any party  
15 desiring a trial de novo shall be made upon the other parties  
16 within [~~ten~~] sixty days after service of the [~~arbitration award~~]  
17 final decision by the ombudsman or the ombudsman's office upon  
18 all parties and the trial de novo shall be filed in circuit  
19 court within [~~thirty~~] ninety days of the written demand.  
20 Failure to meet these deadlines shall preclude a party from  
21 demanding a trial de novo.



1       ~~[(c) The award of arbitration shall not be made known to~~  
2 ~~the trier of fact at a trial de novo.]~~

3       ~~[(d)]~~ (c) In any trial de novo demanded under this  
4 section, if the party demanding a trial de novo does not prevail  
5 at trial, the party demanding the trial de novo shall be charged  
6 with all reasonable costs, expenses, and attorneys' fees of the  
7 trial. When there is more than one party on one or both sides  
8 of an action, or more than one issue in dispute, the court shall  
9 allocate its award of costs, expenses, and attorneys' fees among  
10 the prevailing parties and tax such fees against those  
11 nonprevailing parties who demanded a trial de novo in accordance  
12 with the principles of equity."

13       SECTION 31. Section 514B-191, Hawaii Revised Statutes, is  
14 amended by amending subsection (a) to read as follows:

15       "(a) An association, board, managing agent, resident  
16 manager, unit owner, or any person acting on behalf of an  
17 association or a unit owner shall not retaliate against a unit  
18 owner, board member, managing agent, resident manager, or  
19 association employee who, through a lawful action done in an  
20 effort to address, prevent, or stop a violation of this chapter  
21 or governing documents of the association:



- 1 (1) Complains or otherwise reports an alleged violation;
- 2 (2) Causes a complaint or report of an alleged violation
- 3 to be filed with the association, the commission, the
- 4 ombudsman's office, or other appropriate entity;
- 5 (3) Participates in or cooperates with an investigation of
- 6 a complaint or report filed with the association, the
- 7 commission, the ombudsman's office, or other
- 8 appropriate entity;
- 9 (4) Otherwise acts in furtherance of a complaint, report,
- 10 or investigation concerning an alleged violation; or
- 11 (5) Exercises or attempts to exercise any right under this
- 12 chapter or the governing documents of the
- 13 association."

14 SECTION 32. Section 514B-161, Hawaii Revised Statutes, is  
 15 repealed.

16 [~~§514B-161 Mediation.~~ (a) ~~The mediation of a dispute~~  
 17 ~~between a unit owner and the board, unit owner and the managing~~  
 18 ~~agent, board members and the board, or directors and managing~~  
 19 ~~agents and the board shall be mandatory upon written request to~~  
 20 ~~the other party when:~~



- 1       ~~(1) The dispute involves the interpretation or enforcement~~
- 2           ~~of the association's declaration, bylaws, or house~~
- 3           ~~rules;~~
- 4       ~~(2) The dispute falls outside the scope of subsection (b);~~
- 5       ~~(3) The parties have not already mediated the same or a~~
- 6           ~~substantially similar dispute; and~~
- 7       ~~(4) An action or an arbitration concerning the dispute has~~
- 8           ~~not been commenced.~~
- 9       ~~(b) The mediation of a dispute between a unit owner and~~
- 10       ~~the board, unit owner and the managing agent, board members and~~
- 11       ~~the board, or directors and managing agents and the board shall~~
- 12       ~~not be mandatory when the dispute involves:~~
- 13           ~~(1) Threatened property damage or the health or safety of~~
- 14           ~~unit owners or any other person;~~
- 15           ~~(2) Assessments;~~
- 16           ~~(3) Personal injury claims; or~~
- 17           ~~(4) Matters that would affect the availability of any~~
- 18           ~~coverage pursuant to an insurance policy obtained by~~
- 19           ~~or on behalf of an association.~~
- 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, unless~~  
21 ~~otherwise specified in:~~



- 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;~~
- 6       ~~(3) An award of an arbitrator in connection with the final~~
- 7           ~~disposition of a claim that was submitted to~~
- 8           ~~mediation; or~~
- 9       ~~(4) An order of the circuit court in connection with~~
- 10           ~~compelled mediation in accordance with subsection (e).~~
- 11       ~~(g) Any individual mediation supported with funds from the~~
- 12       ~~condominium education trust fund pursuant to section 514B-71:~~
- 13           ~~(1) Shall include a fee of \$375 to be paid by each party~~
- 14           ~~to the mediator;~~
- 15           ~~(2) Shall receive no more from the fund than is~~
- 16           ~~appropriate under the circumstances, and in no event~~
- 17           ~~more than \$3,000 total;~~
- 18           ~~(3) May include issues and parties in addition to those~~
- 19           ~~identified in subsection (a); provided that a unit~~
- 20           ~~owner or a developer and board are parties to the~~
- 21           ~~mediation at all times and the unit owner or developer~~



1           ~~and the board mutually consent in writing to the~~  
2           ~~addition of the issues and parties; and~~  
3           ~~(4) May include an evaluation by the mediator of any~~  
4           ~~claims presented during the mediation.~~  
5           ~~(h) A court or an arbitrator with jurisdiction may~~  
6           ~~consider a timely request to stay any action or proceeding~~  
7           ~~concerning a dispute that would be subject to mediation pursuant~~  
8           ~~to subsection (a) in the absence of the action or proceeding,~~  
9           ~~and refer the matter to mediation; provided that:~~  
10          ~~(1) The court or arbitrator determines that the request is~~  
11          ~~made in good faith and a stay would not be prejudicial~~  
12          ~~to any party; and~~  
13          ~~(2) No stay shall exceed a period of ninety days."]~~  
14          SECTION 33. Section 514B-162, Hawaii Revised Statutes, is  
15          repealed.  
16          ["~~§514B-162~~ **Arbitration.** ~~(a) At the request of any~~  
17          ~~party, any dispute concerning or involving one or more unit~~  
18          ~~owners and an association, its board, managing agent, or one or~~  
19          ~~more other unit owners relating to the interpretation,~~  
20          ~~application, or enforcement of this chapter or the association's~~  
21          ~~declaration, bylaws, or house rules adopted in accordance with~~



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



- 1       ~~(b) Nothing in subsection (a) shall be interpreted to~~  
2 ~~mandate the arbitration of any dispute involving:~~
- 3       ~~(1) The real estate commission;~~  
4       ~~(2) The mortgagee of a mortgage of record;~~  
5       ~~(3) The developer, general contractor, subcontractors, or~~  
6       ~~design professionals for the project; provided that~~  
7       ~~when any person exempted by this paragraph is also a~~  
8       ~~unit owner, a director, or managing agent, such person~~  
9       ~~in those capacities, shall be subject to the~~  
10       ~~provisions of subsection (a);~~
- 11       ~~(4) Actions seeking equitable relief involving threatened~~  
12       ~~property damage or the health or safety of unit owners~~  
13       ~~or any other person;~~
- 14       ~~(5) Actions to collect assessments which are liens or~~  
15       ~~subject to foreclosure; provided that a unit owner who~~  
16       ~~pays the full amount of an assessment and fulfills the~~  
17       ~~requirements of section 514B-146 shall have the right~~  
18       ~~to demand arbitration of the owner's dispute,~~  
19       ~~including a dispute about the amount and validity of~~  
20       ~~the assessment;~~
- 21       ~~(6) Personal injury claims;~~



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

7       ~~(8) Any other cases which are determined, as provided in~~  
8       ~~subsection (c), to be unsuitable for disposition by~~  
9       ~~arbitration.~~

10       ~~(c) At any time within twenty days of being served with a~~  
11 ~~written demand for arbitration, any party so served may apply to~~  
12 ~~the circuit court in the judicial circuit in which the~~  
13 ~~condominium is located for a determination that the subject~~  
14 ~~matter of the dispute is unsuitable for disposition by~~  
15 ~~arbitration.~~

16       ~~In determining whether the subject matter of a dispute is~~  
17 ~~unsuitable for disposition by arbitration, a court may consider:~~

18       ~~(1) The magnitude of the potential award, or any issue of~~  
19       ~~broad public concern raised by the subject matter~~  
20       ~~underlying the dispute;~~



1       ~~(2) Problems referred to the court where court regulated~~  
2           ~~discovery is necessary;~~

3       ~~(3) The fact that the matter in dispute is a reasonable or~~  
4           ~~necessary issue to be resolved in pending litigation~~  
5           ~~and involves other matters not covered by or related~~  
6           ~~to this chapter;~~

7       ~~(4) The fact that the matter to be arbitrated is only part~~  
8           ~~of a dispute involving other parties or issues which~~  
9           ~~are not subject to arbitration under this section; and~~

10       ~~(5) Any matters of dispute where disposition by~~  
11           ~~arbitration, in the absence of complete judicial~~  
12           ~~review, would not afford substantial justice to one or~~  
13           ~~more of the parties.~~

14       ~~Any such application to the circuit court shall be made and~~  
15       ~~heard in a summary manner and in accordance with procedures for~~  
16       ~~the making and hearing of motions. The prevailing party shall~~  
17       ~~be awarded its attorneys' fees and costs in an amount not to~~  
18       ~~exceed \$200.~~

19       ~~(d) In the event of a dispute as to whether a claim shall~~  
20       ~~be excluded from mandatory arbitration under subsection (b) (7),~~  
21       ~~any party to an arbitration may file a complaint for declaratory~~



1 relief against the involved insurer or insurers for a  
2 determination of whether insurance coverage is unavailable due  
3 to the pursuit of action by arbitration. The complaint shall be  
4 filed with the circuit court in the judicial circuit in which  
5 the condominium is located. The insurer or insurers shall file  
6 an answer to the complaint within twenty days of the date of  
7 service of the complaint and the issue shall be disposed of by  
8 the circuit court at a hearing to be held at the earliest  
9 available date; provided that the hearing shall not be held  
10 within twenty days from the date of service of the complaint  
11 upon the insurer or insurers.

12 (e) Notwithstanding any provision in this chapter to the  
13 contrary, the declaration, or the bylaws, the award of any  
14 costs, expenses, and legal fees by the arbitrator shall be in  
15 the sole discretion of the arbitrator and the determination of  
16 costs, expenses, and legal fees shall be binding upon all  
17 parties.

18 (f) The award of the arbitrator shall be in writing and  
19 acknowledged or proved in like manner as a deed for the  
20 conveyance of real estate, and shall be served by the arbitrator  
21 on each of the parties to the arbitration, personally or by





1 ~~registered or certified mail. At any time within one year after~~  
2 ~~the award is made and served, any party to the arbitration may~~  
3 ~~apply to the circuit court of the judicial circuit in which the~~  
4 ~~condominium is located for an order confirming the award. The~~  
5 ~~court shall grant the order confirming the award pursuant to~~  
6 ~~section 658A-22, unless the award is vacated, modified, or~~  
7 ~~corrected, as provided in sections 658A-20, 658A-23, and~~  
8 ~~658A-24, or a trial de novo is demanded under subsection (h), or~~  
9 ~~the award is successfully appealed under subsection (h). The~~  
10 ~~record shall be filed with the motion to confirm award, and~~  
11 ~~notice of the motion shall be served upon each other party or~~  
12 ~~their respective attorneys in the manner required for service of~~  
13 ~~notice of a motion.~~

14 ~~(g) Findings of fact and conclusions of law, as requested~~  
15 ~~by any party prior to the arbitration hearing, shall be promptly~~  
16 ~~provided to the requesting party upon payment of the reasonable~~  
17 ~~cost thereof.~~

18 ~~(h) Any party to an arbitration under this section may~~  
19 ~~apply to vacate, modify, or correct the arbitration award for~~  
20 ~~the grounds set out in chapter 658A. All reasonable costs,~~



1 ~~expenses, and attorneys' fees on appeal shall be charged to the~~  
2 ~~nonprevailing party." ]~~

3 SECTION 34. Section 514B-162.5, Hawaii Revised Statutes,  
4 is repealed.

5 ~~[ "~~§514B-162.5~~ **Voluntary binding arbitration.** (a) Any~~  
6 ~~parties permitted to mediate condominium related disputes~~  
7 ~~pursuant to section 514B-161 may agree to enter into voluntary~~  
8 ~~binding arbitration, which may be supported with funds from the~~  
9 ~~condominium education trust fund pursuant to section 514B-71;~~  
10 ~~provided that voluntary binding arbitration under this section~~  
11 ~~may be supported with funds from the condominium education trust~~  
12 ~~fund only after the parties have first attempted evaluative~~  
13 ~~mediation.~~

14 ~~(b) Any voluntary binding arbitration entered into~~  
15 ~~pursuant to this section and supported with funds from the~~  
16 ~~condominium education 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 \$6,000 total; and~~





1           SECTION 37. In codifying the new sections added by  
2 sections 2 and 3 of this Act, the revisor of statutes shall  
3 substitute appropriate section numbers for the letters used in  
4 designating the new sections in this Act.

5           SECTION 38. Statutory material to be repealed is bracketed  
6 and stricken. New statutory material is underscored.

7           SECTION 39. This Act shall take effect on January 1, 2024;  
8 provided that sections 35 and 36 shall take effect on July 1,  
9 2023.

10

INTRODUCED BY:



JAN 18 2023



# H.B. NO. 178

**Report Title:**

DCCA; Condominiums Associations; Cooperative Housing Corporations; Planned Community Associations; Ombudsman's Office; Dispute Intervention; Complaints and Enforcement Officers; Intake Specialists; Condominium Education Trust Fund; Ombudsman's Office Special Fund; Appropriations

**Description:**

Establishes an ombudsman's office for homeowner associations within the department of commerce and consumer affairs. Establishes an ombudsman's office special fund. Requires board members of condominium associations, cooperative housing corporations, and planned community associations to meet certain educational requirements through classes offered by the ombudsman. Updates statutes relating to condominium associations, cooperative housing corporations, and planned community associations to integrate the role and functions of the ombudsman's office for homeowner associations. Appropriates funds for establishment of the ombudsman's office. Effective 1/1/2024.

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

