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# A BILL FOR AN ACT

RELATING TO CONDOMINIUMS.

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

1           SECTION 1. The purpose of this Act is to promote the use  
2 of alternative dispute resolution methods for condominium-  
3 related disputes. The legislature finds that the amendment of  
4 part VI, chapter 514B, Hawaii Revised Statutes, pursuant to this  
5 Act will promote the use of alternative dispute resolution  
6 methods for condominium-related disputes. Corresponding changes  
7 to other parts of chapter 514B, Hawaii Revised Statutes, will  
8 serve the same purpose.

9           SECTION 2. Chapter 514B, Hawaii Revised Statutes, is  
10 amended by adding two new sections to subpart C of part VI to be  
11 appropriately designated and to read as follows:

12           "§514B-A Attorneys' fees and costs. (a) In any action or  
13 proceeding concerning the:

14           (1) Collection of any delinquent assessments;

15           (2) Foreclosure of any lien on an owner's unit; or



1        (3) Interpretation of enforcement of the declaration,  
2                    bylaws, house rules, and this chapter, or the rules of  
3                    the commission,  
4 the prevailing party shall be awarded all reasonable attorneys'  
5 fees and costs.

6        (b) Attorneys' fees and costs assessed to a unit owner,  
7 except pursuant to the judgment of a court or the award of an  
8 arbitrator, may be disputed in accordance with section 514B-146.

9        (c) A party that participates in the early neutral  
10 evaluation of a condominium-related dispute, and that expressly  
11 accepts the whole of the evaluation in writing, and complies  
12 with the terms thereof, shall not be subject to any further  
13 claim of attorneys' fees and costs in connection with the  
14 dispute.

15        **§514B-B Fines; when collectable.** (a) An association may  
16 impose fines for the violation of the declaration, the bylaws,  
17 and the house rules adopted pursuant to this chapter, subject to  
18 the following requirements:

19        (1) The amount of the fine shall be reasonable;

20        (2) Notice of imposition of the fine shall include:



1           (A) A general description of the act or omission for  
2           which the fine is imposed;

3           (B) Reference to one or more provisions of the  
4           declaration, the bylaws, or the house rules,  
5           violated by act or omission; and

6           (C) Notice of an appeal procedure that may be  
7           initiated within thirty days after imposition of  
8           the fine and that provides an aggrieved person  
9           with a reasonable opportunity to challenge the  
10          fine and be heard by the board regarding the  
11          challenge;

12          (3) Subject to its jurisdictional limits, the small claims  
13          division of the district court in the circuit where  
14          the condominium is located may finally determine the  
15          validity and the amount of a fine if the person first  
16          timely appeals imposition of a fine to the board and  
17          initiates an action within thirty days after receipt  
18          of notice of disposition of the appeal; and

19          (4) A fine shall be deemed to be collectable once the:

20           (A) Time to initiate an appeal has expired and an  
21           appeal has not been initiated;



1           (B) Fine has been upheld following a timely appeal  
2           and a small claims court action has not been  
3           timely initiated; or

4           (C) Small claims court has not invalidated the fine  
5           within ninety days after timely initiation of a  
6           small claims court action.

7           (b) No attorneys' fees with respect to a fine shall be  
8           charged by an association to any unit owner or tenant before the  
9           time when a fine is deemed to be collectable.

10           (c) The imposition of a fine, and the determination of a  
11           small claims court, if any, shall be without prejudice to the  
12           exercise of any other remedy available to an association."

13           SECTION 3. Chapter 514B, Hawaii Revised Statutes, is  
14           amended by adding a new subpart to part VI to be appropriately  
15           designated and to read as follows:

16                                   **"ALTERNATIVE DISPUTE RESOLUTION**

17           **§514B-C Methods of dispute resolution.** The condominium  
18           education trust fund may be used to provide support for the  
19           following methods of alternative dispute resolution in  
20           connection with any condominium-related dispute:

21           (1) Mediation;



1 (2) Binding arbitration; and

2 (3) Early neutral evaluation.

3 **§514B-D Mediation.** (a) The mediation of a condominium-  
4 related dispute described in subsection (b) shall be mandatory  
5 upon the written request of a party to the dispute.

6 Participation in mediation of a condominium-related dispute may  
7 be compelled pursuant to the procedures described in this  
8 section.

9 (b) A condominium-related dispute subject to mandatory  
10 mediation shall be any dispute that involves the interpretation  
11 or enforcement of the association's declaration, bylaws, or  
12 house rules.

13 (c) The mediation of a condominium-related dispute shall  
14 not be mandatory if the dispute involves:

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

17 (2) Assessments, except as provided in section 514B-146;

18 (3) Personal injury claims;

19 (4) Matters that would affect the availability of any  
20 coverage pursuant to an insurance policy obtained by  
21 or on behalf of an association;



- 1           (5) The same or substantially similar issues that have  
2                   already been mediated; or
- 3           (6) Issues that are subject to an action or a binding  
4                   alternative dispute resolution mechanism that has  
5                   already been commenced.
- 6           (d) A unit owner or an association may apply to the  
7 circuit court in the judicial circuit where the condominium is  
8 located for an order compelling mediation only when:
- 9           (1) Mediation of the dispute is mandatory pursuant to  
10                   subsection (a);
- 11           (2) A written request for mediation has been delivered to  
12                   and received by the other party; and
- 13           (3) The parties have not agreed to a mediator or a  
14                   mediation date within forty-five days after a party  
15                   receives a written request for mediation.
- 16           (e) Any application made to the circuit court pursuant to  
17 subsection (d) shall be made and heard in a summary manner and  
18 in accordance with procedures for the making and hearing of  
19 motions. The prevailing party shall be entitled to an award of  
20 all reasonable attorneys' fees and costs.



1 (f) Each party to a mediation shall bear the attorneys'  
2 fees and costs and other expenses of preparing for and  
3 participating in mediation incurred by the party, unless  
4 otherwise specified in:

5 (1) A written agreement that is signed by the parties;

6 (2) An order of a court in connection with the final  
7 disposition of a claim that was submitted to  
8 mediation;

9 (3) An award of an arbitrator in connection with the final  
10 disposition of a claim that was submitted to  
11 mediation; or

12 (4) An order of the circuit court in connection with  
13 compelled mediation in accordance with subsection (d).

14 (g) Any individual mediation supported with funds from the  
15 condominium education trust pursuant to section 514B-71:

16 (1) Shall include a fee of \$150 to be paid by each party  
17 to the mediator; provided that moneys from the fund  
18 may be used to pay the fee for each unit owner who  
19 demonstrates to the satisfaction of the commission  
20 that the fee will pose an unreasonable economic  
21 burden;



- 1           (2) Shall receive no more from the fund than is  
2           appropriate under the circumstances, and in no event  
3           more than a total of \$            ;  
4           (3) May include disputes and parties in addition to those  
5           identified in subsection (a); provided that a unit  
6           owner or a developer and board are parties to the  
7           mediation at all times and the unit owner or developer  
8           and board mutually consent in writing to the addition  
9           of the disputes and parties; and  
10          (4) May include an evaluation by the mediator of any  
11          claims or defenses presented during the mediation;  
12          provided that an evaluative form of mediation shall be  
13          required whenever requested by a party to a  
14          condominium-related dispute.  
15          (h) A court or an arbitrator with jurisdiction may  
16          consider a timely request to stay any action or proceeding  
17          concerning a dispute that would be subject to mediation pursuant  
18          to subsection (a) in the absence of the action or proceeding,  
19          and refer the matter to mediation; provided that:





1 (1) The court of arbitrator determines that the request is  
2 made in good faith and a stay would not be prejudicial  
3 to any party; and

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

5 **§514B-E Binding arbitration.** (a) Support from the  
6 condominium education trust fund, for binding arbitration of a  
7 condominium-related dispute, shall be authorized when:

8 (1) The dispute has first been submitted to an evaluative  
9 form of mediation pursuant to section 514B-F; and

10 (2) All parties to the dispute agree in writing to be  
11 bound, in accordance with and subject to chapter 658A.

12 (b) Support for any individual arbitration shall not  
13 exceed what is appropriate under the circumstances, and in no  
14 event shall exceed a total of \$ .

15 **§514B-F Early neutral evaluation.** (a) Any party to a  
16 condominium-related dispute that is subject to mandatory  
17 mediation may request that the dispute be submitted to a process  
18 of early neutral evaluation following participation in  
19 mediation. Participation in early neutral evaluation of a  
20 condominium-related dispute subject to mandatory mediation may  
21 be compelled pursuant to this section.



1 (b) A unit owner or an association may apply to the  
2 circuit court in the judicial circuit where the condominium is  
3 located for an order compelling early neutral evaluation only  
4 when:

5 (1) Mediation of the dispute pursuant to section 514B-C  
6 has been completed;

7 (2) A written request for early neutral evaluation has  
8 been delivered to and received by the other party or  
9 parties; and

10 (3) The parties have not agreed to an evaluator or a  
11 hearing date within forty-five days after a party  
12 receives a written request for early neutral  
13 evaluation.

14 (c) Any application made to the circuit court pursuant to  
15 subsection (b) shall be made and heard in a summary manner and  
16 in accordance with procedures for the making and hearing of  
17 motions. The prevailing party shall be entitled to an award of  
18 all reasonable attorneys' fees and costs.

19 (d) Each party to an early neutral evaluation shall bear  
20 the attorneys' fees and costs and other expenses of preparing



1 for and participating in the evaluation process incurred by the  
2 party, unless otherwise specified in:

3 (1) A written agreement that is signed by the parties;

4 (2) An order of the circuit court in connection with  
5 compelled participation in the evaluation process, in  
6 accordance with subsection (c); or

7 (3) An evaluator's timely written evaluation, as provided  
8 in subsection (g).

9 (e) A party to the dispute that has received a request for  
10 early neutral evaluation in accordance with this section shall  
11 not initiate an action in any court regarding the subject matter  
12 of the dispute until ninety-one days after completion of the  
13 hearing described in subsection (f), except as may be reasonably  
14 required to preserve any claim or defense. Any action so  
15 initiated shall be stayed pending completion of the evaluation  
16 process, except pursuant to the order of a court.

17 (f) The evaluation process shall be determined by the  
18 evaluator; provided that every evaluation process shall include  
19 the reasonable opportunity for each party to the dispute to:

20 (1) Submit a written position statement, together with  
21 supporting declarations or exhibits;



1 (2) Submit a written response to the position statement of  
2 any other party; and

3 (3) Set forth the essential points upon which an asserted  
4 claim or defense is based at an informal hearing  
5 convened by the evaluator; provided that the rules of  
6 evidence, except those concerning privileges, shall  
7 not apply at the hearing.

8 (g) Within ninety days following completion of the  
9 hearing, the evaluator shall provide the parties with a written  
10 evaluation of the claims and defenses presented by the parties  
11 in their written statements and oral presentations. The  
12 evaluation shall consist of:

13 (1) A reasoned decision, determining the prevailing party  
14 and what relief, if any, should be granted; and

15 (2) A separate document, containing an award of reasonable  
16 attorneys' fees and costs and other expenses to the  
17 prevailing party.

18 (h) The evaluator's timely written evaluation shall:

19 (1) Bind the parties with respect to the evaluator's award  
20 of attorneys' fees and costs and other expenses in  
21 connection with the evaluation process; and



1           (2) Serve as the basis for an award of all reasonable  
 2           attorneys' fees and costs and other expenses to the  
 3           prevailing party in any action or proceeding relating  
 4           to the subject matter of the dispute whenever that  
 5           party is also the party determined by the evaluator to  
 6           have been the prevailing party.

7           (i) Support for any individual early neutral evaluation of  
 8           a dispute shall not exceed what is appropriate under the  
 9           circumstances, and in no event shall exceed a total of  
 10          \$           .

11           **§514B-G Qualifications of mediators, arbitrators, and**  
 12           **evaluators.** The commission may determine the qualifications of  
 13           any individual who serves as a mediator, arbitrator, or  
 14           evaluator in a matter involving payment from the condominium  
 15           education trust fund, provided that:

16           (1) A mediator shall have a minimum of           years full-  
 17           time experience working with condominiums in a  
 18           professional capacity;

19           (2) An arbitrator shall have a minimum of           years  
 20           full-time experience working with condominiums in a  
 21           professional capacity; and



1 (3) An evaluator shall have a minimum of years full-  
2 time experience working with condominiums in a  
3 professional capacity.

4 Alternatively, the individual may demonstrate other exceptional  
5 knowledge and experience, such as by serving as a judge for a  
6 similar number of years.

7 **§514B-H Disclosures by mediators, arbitrators, and**  
8 **evaluators.** (a) Before accepting appointment, an individual  
9 who is requested to serve as a mediator or as an evaluator shall  
10 disclose to all parties involved in the condominium-related  
11 dispute any known facts that a reasonable person would consider  
12 likely to affect the impartiality of the mediator or evaluator  
13 in the mediation or in the early neutral evaluation process,  
14 including but not limited to:

15 (1) A direct and material financial or personal interest  
16 in the outcome of the dispute; and

17 (2) An existing or past substantial relationship with any  
18 of the parties to the dispute, their counsel or  
19 representatives, or a witness.

20 (b) The disclosure obligation of the mediator or evaluator  
21 shall continue after appointment and shall apply to any facts



1 learned after accepting appointment that a reasonable person  
2 would consider likely to affect the impartiality of the mediator  
3 or evaluator.

4 (c) An agreement made in mediation shall be voidable if  
5 the mediator failed to make a disclosure required by subsection  
6 (a).

7 (d) An evaluation made by an evaluator may be excluded  
8 from consideration in the award of attorneys' fees and costs and  
9 other expenses if the evaluator failed to make a disclosure  
10 required by subsection (a).

11 (e) Disclosures by arbitrators shall be governed pursuant  
12 to chapter 658A."

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

15 "**§421I-9 Mediation and arbitration of disputes.** At the  
16 request of any party, any dispute concerning or involving one or  
17 more shareholders and a corporation, its board of directors,  
18 managing agent, resident manager, or one or more other  
19 shareholders relating to the interpretation, application, or  
20 enforcement of this chapter or the corporation's articles of  
21 incorporation, bylaws, or rules adopted in accordance with its



1 bylaws shall be submitted first to mediation. When all  
2 reasonable efforts for mediation have been made and the dispute  
3 is not settled either in conference between the parties or  
4 through mediation, the dispute shall be submitted to  
5 ~~[arbitration]~~ alternative dispute resolution in the same manner  
6 and subject to the same requirements, to the extent practicable,  
7 which now apply to condominiums under ~~[section 514B-162.]~~  
8 subpart \_\_\_\_\_ of part VI of chapter 514B."

9 SECTION 5. Section 514B-3, Hawaii Revised Statutes, is  
10 amended by adding a new definition to be appropriately inserted  
11 and to read as follows:

12 "Condominium-related dispute" means a dispute between:

- 13 (1) A unit owner and the board;  
14 (2) A unit owner and the managing agent; or  
15 (3) Board members and the board."

16 SECTION 6. Section 514B-71, Hawaii Revised Statutes, is  
17 amended by amending subsection (a) to read as follows:

18 "(a) The commission shall establish a condominium  
19 education trust fund that the commission 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;
- 7 (3) Expeditious and inexpensive procedures for resolving
- 8 association disputes; and
- 9 (4) Support for [~~mediation of condominium related~~
- 10 ~~disputes; and~~
- 11 ~~(5) Support for voluntary binding arbitration between~~
- 12 ~~parties in condominium related disputes, pursuant to~~
- 13 ~~section 514B-162.5.] alternative dispute resolution,~~
- 14 as described in subpart \_\_\_\_\_ of part VI of this
- 15 chapter."

16 SECTION 7. Section 514B-72, Hawaii Revised Statutes, is  
 17 amended by amending subsection (a) to read as follows:

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

- 20 (1) A condominium education trust fund fee within one year
- 21 after the recordation of the purchase of the first



1 unit or within thirty days of the association's first  
2 meeting, and thereafter, on or before June 30 of every  
3 odd-numbered year, as prescribed by rules adopted  
4 pursuant to chapter 91; and

- 5 (2) Beginning with the July 1, 2015, biennium  
6 registration, an additional annual condominium  
7 education trust fund fee in an amount equal to the  
8 product of \$1.50 times the number of condominium units  
9 included in the registered project or association to  
10 be dedicated to supporting [~~mediation or voluntary~~  
11 ~~binding arbitration of condominium related disputes.~~]  
12 alternative dispute resolution, as described in  
13 subpart \_\_\_\_\_ of part VI of this chapter. The  
14 additional condominium education trust fund fee shall  
15 total \$3 per unit until the commission adopts rules  
16 pursuant to chapter 91. On June 30 of every odd-  
17 numbered year, any unexpended additional amounts paid  
18 into the condominium education trust fund and  
19 initially dedicated to supporting [~~mediation or~~  
20 ~~voluntary binding arbitration~~] alternative dispute  
21 resolution of [condominium related] condominium-



1            related disputes, as required by this paragraph, shall  
2            be used for educational purposes as provided in  
3            section 514B-71(a) (1), (2), and (3)."

4            SECTION 8. Section 514B-104, Hawaii Revised Statutes, is  
5 amended by amending subsection (a) to read as follows:

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

- 9            (1) Adopt and amend the declaration, bylaws, and rules and  
10            regulations;
- 11            (2) Adopt and amend budgets for revenues, expenditures,  
12            and reserves and collect assessments for common  
13            expenses from unit owners, subject to section  
14            514B-148;
- 15            (3) Hire and discharge managing agents and other  
16            independent contractors, agents, and employees;
- 17            (4) Institute, defend, or intervene in litigation or  
18            administrative proceedings in its own name on behalf  
19            of itself or two or more unit owners on matters  
20            affecting the condominium. For the purposes of



- 1 actions under chapter 480, associations shall be  
2 deemed to be "consumers";
- 3 (5) Make contracts and incur liabilities;
- 4 (6) Regulate the use, maintenance, repair, replacement,  
5 and modification of common elements;
- 6 (7) Cause additional improvements to be made as a part of  
7 the common elements;
- 8 (8) Acquire, hold, encumber, and convey in its own name  
9 any right, title, or interest to real or personal  
10 property; provided that:
- 11 (A) Designation of additional areas to be common  
12 elements or subject to common expenses after the  
13 initial filing of the declaration or bylaws shall  
14 require the approval of at least sixty-seven per  
15 cent of the unit owners;
- 16 (B) If the developer discloses to the initial buyer  
17 in writing that additional areas will be  
18 designated as common elements whether pursuant to  
19 an incremental or phased project or otherwise,  
20 the requirements of this paragraph shall not  
21 apply as to those additional areas; and



1 (C) The requirements of this paragraph shall not  
2 apply to the purchase of a unit for a resident  
3 manager, which may be purchased with the approval  
4 of the board;

5 (9) Subject to section 514B-38, grant easements, leases,  
6 licenses, and concessions through or over the common  
7 elements and permit encroachments on the common  
8 elements;

9 (10) Impose and receive any payments, fees, or charges for  
10 the use, rental, or operation of the common elements,  
11 other than limited common elements described in  
12 section 514B-35(2) and (4), and for services provided  
13 to unit owners;

14 (11) Impose charges and penalties, including late fees and  
15 interest, for late payment of assessments and levy  
16 reasonable fines for violations of the declaration,  
17 bylaws, rules, and regulations of the association,  
18 ~~[either] in accordance with [the bylaws or, if the~~  
19 ~~bylaws are silent, pursuant to a resolution adopted by~~  
20 ~~the board that establishes a fining procedure that~~  
21 ~~states the basis for the fine and allows an appeal to~~



1 ~~the board of the fine with notice and an opportunity~~  
2 ~~to be heard and providing that if the fine is paid,~~  
3 ~~the unit owner shall have the right to initiate a~~  
4 ~~dispute resolution process as provided by sections~~  
5 ~~514B-161, 514B-162, or by filing a request for an~~  
6 ~~administrative hearing under a pilot program~~  
7 ~~administered by the department of commerce and~~  
8 ~~consumer affairs;] subpart of part VI of this~~  
9 chapter and this section;

- 10 (12) Impose reasonable charges for the preparation and  
11 recordation of amendments to the declaration,  
12 documents requested for resale of units, or statements  
13 of unpaid assessments;
- 14 (13) Provide for cumulative voting through a provision in  
15 the bylaws;
- 16 (14) Provide for the indemnification of its officers,  
17 board, committee members, and agents, and maintain  
18 directors' and officers' liability insurance;
- 19 (15) Assign its right to future income, including the right  
20 to receive common expense assessments, but only to the  
21 extent section 514B-105(e) expressly so provides;



- 1           (16) Exercise any other powers conferred by the declaration  
2                   or bylaws;
- 3           (17) Exercise all other powers that may be exercised in  
4                   this State by legal entities of the same type as the  
5                   association, except to the extent inconsistent with  
6                   this chapter;
- 7           (18) Exercise any other powers necessary and proper for the  
8                   governance and operation of the association; and
- 9           (19) By regulation, subject to [~~sections~~] section  
10                   514B-146[~~, 514B-161, and 514B-162,~~] and  
11                   subpart \_\_\_\_\_ of part VI of this chapter, require that  
12                   disputes between the board and unit owners or between  
13                   two or more unit owners regarding the condominium be  
14                   submitted to nonbinding alternative dispute resolution  
15                   in the manner described in the regulation as a  
16                   prerequisite to commencement of a judicial  
17                   proceeding."

18           SECTION 9. Section 514B-105, Hawaii Revised Statutes, is  
19 amended by amending subsection (c) to read as follows:

20           "(c) Any payments made by or on behalf of a unit owner  
21 shall first be applied to outstanding common expenses that are



1 assessed to all unit owners in proportion to the common interest  
2 appurtenant to their respective units, including commercial  
3 property assessed financing assessment expenses incurred for  
4 improvements financed pursuant to section 196-64.5. Only after  
5 the outstanding common expenses have been paid in full may the  
6 payments be applied to other charges owed to the association,  
7 including assessed charges to the unit such as ground lease  
8 rent, utility sub-metering, storage lockers, parking stalls,  
9 boat slips, insurance deductibles, and cable. After these  
10 charges are paid, other charges, including unpaid late fees,  
11 legal fees, collectable fines, and interest, may be assessed in  
12 accordance with an application of payment policy adopted by the  
13 board; provided that if a unit owner has designated that any  
14 payment is for a specific charge that is not a common expense as  
15 described in this subsection, the payment may be applied in  
16 accordance with the unit owner's designation even if common  
17 expenses remain outstanding."

18 SECTION 10. Section 514B-106, Hawaii Revised Statutes, is  
19 amended by amending subsection (a) to read as follows:

20 "(a) Except as provided in the declaration, the bylaws,  
21 subsection (b), or other provisions of this chapter, the board





1 may act in all instances on behalf of the association. In the  
2 performance of their duties, officers and members of the board  
3 shall owe the association a fiduciary duty and exercise the  
4 degree of care and loyalty required of an officer or director of  
5 a corporation organized under chapter 414D. ~~[Any violation by a  
6 board or its officers or members of the mandatory provisions of  
7 section 514B-161 or 514B-162 may constitute a violation of the  
8 fiduciary duty owed pursuant to this subsection; provided that a  
9 board member may avoid liability under this subsection by  
10 indicating in writing the board member's disagreement with such  
11 board action or rescinding or withdrawing the violating conduct  
12 within forty five days of the occurrence of the initial  
13 violation.]"~~

14 SECTION 11. Section 514B-146, Hawaii Revised Statutes, is  
15 amended to read as follows:

16 **"§514B-146 Association fiscal matters; lien for**  
17 **assessments.** (a) All sums assessed by the association but  
18 unpaid for the share of the common expenses chargeable to any  
19 unit shall constitute a lien on the unit with priority over all  
20 other liens, except:



1           (1) Liens for real property taxes and assessments lawfully  
2           imposed by governmental authority against the unit;  
3           and  
4           (2) Except as provided in subsection (j), all sums unpaid  
5           on any mortgage of record that was recorded before the  
6           recordation of a notice of a lien by the association,  
7           and costs and expenses including attorneys' fees  
8           provided in the mortgages;  
9 provided that a lien recorded by an association for unpaid  
10 assessments shall expire six years from the date of recordation  
11 unless proceedings to enforce the lien are instituted before the  
12 expiration of the lien; provided further that the expiration of  
13 a recorded lien shall in no way affect the association's  
14 automatic lien that arises pursuant to this subsection or the  
15 declaration or bylaws. Any proceedings to enforce an  
16 association's lien for any assessment shall be instituted within  
17 six years after the assessment became due; provided that if the  
18 owner of a unit subject to a lien of the association files a  
19 petition for relief under the United States Bankruptcy Code (11  
20 U.S.C. §101 et seq.), the period of time for instituting  
21 proceedings to enforce the association's lien shall be tolled



1 until thirty days after the automatic stay of proceedings under  
2 section 362 of the United States Bankruptcy Code (11 U.S.C.  
3 §362) is lifted.

4 The lien of the association may be foreclosed by action or  
5 by nonjudicial or power of sale foreclosure, regardless of the  
6 presence or absence of power of sale language in an  
7 association's governing documents, by the managing agent or  
8 board, acting on behalf of the association and in the name of  
9 the association; provided that no association may exercise the  
10 nonjudicial or power of sale remedies provided in chapter 667 to  
11 foreclose a lien against any unit that arises solely from fines,  
12 penalties, legal fees, or late fees, and the foreclosure of the  
13 lien shall be filed in court pursuant to part IA of chapter 667.

14 In any foreclosure described in this section, the unit  
15 owner shall be required to pay a reasonable rent for the unit,  
16 if so provided in the bylaws or the law, and the plaintiff in  
17 the foreclosure shall be entitled to the appointment of a  
18 receiver to collect the rent owed by the unit owner or any  
19 tenant of the unit. If the association is the plaintiff, it may  
20 request that its managing agent be appointed as receiver to  
21 collect the rent from the tenant. The managing agent or board,



1 acting on behalf of the association and in the name of the  
2 association, unless prohibited by the declaration, may bid on  
3 the unit at foreclosure sale, and acquire and hold, lease,  
4 mortgage, and convey the unit. Action to recover a money  
5 judgment for unpaid common expenses shall be maintainable  
6 without foreclosing or waiving the lien securing the unpaid  
7 common expenses owed.

8 (b) Except as provided in subsection (j), when the  
9 mortgagee of a mortgage of record or other purchaser of a unit  
10 obtains title to the unit as a result of foreclosure of the  
11 mortgage, the acquirer of title and the acquirer's successors  
12 and assigns shall not be liable for the share of the common  
13 expenses or assessments by the association chargeable to the  
14 unit that became due [~~prior to~~] before the acquisition of title  
15 to the unit by the acquirer. The unpaid share of common  
16 expenses or assessments shall be deemed to be common expenses  
17 collectible from all of the unit owners, including the acquirer  
18 and the acquirer's successors and assigns. The mortgagee of  
19 record or other purchaser of the unit shall be deemed to acquire  
20 title and shall be required to pay the unit's share of common  
21 expenses and assessments beginning:



1           (1) Thirty-six days after the order confirming the sale to  
2           the purchaser has been filed with the court;  
3           (2) Sixty days after the hearing at which the court grants  
4           the motion to confirm the sale to the purchaser;  
5           (3) Thirty days after the public sale in a nonjudicial  
6           power of sale foreclosure conducted pursuant to  
7           chapter 667; or  
8           (4) Upon the recording of the instrument of conveyance;  
9           whichever occurs first; provided that the mortgagee of record or  
10          other purchaser of the unit shall not be deemed to acquire title  
11          under paragraph (1), (2), or (3), if transfer of title is  
12          delayed past the thirty-six days specified in paragraph (1), the  
13          sixty days specified in paragraph (2), or the thirty days  
14          specified in paragraph (3), when a person who appears at the  
15          hearing on the motion or a party to the foreclosure action  
16          requests reconsideration of the motion or order to confirm sale,  
17          objects to the form of the proposed order to confirm sale,  
18          appeals the decision of the court to grant the motion to confirm  
19          sale, or the debtor or mortgagor declares bankruptcy or is  
20          involuntarily placed into bankruptcy. In any ~~such~~ case, the  
21          mortgagee of record or other purchaser of the unit shall be



1 deemed to acquire title upon recordation of the instrument of  
2 conveyance.

3 ~~[(c) A unit owner who receives a demand for payment from~~  
4 ~~an association and disputes the amount of an assessment may~~  
5 ~~request a written statement clearly indicating:~~

6 ~~(1) The amount of common expenses included in the~~  
7 ~~assessment, including the due date of each amount~~  
8 ~~claimed;~~

9 ~~(2) The amount of any penalty or fine, late fee, lien~~  
10 ~~filing fee, and any other charge included in the~~  
11 ~~assessment that is not imposed on all unit owners as a~~  
12 ~~common expense; and~~

13 ~~(3) The amount of attorneys' fees and costs, if any,~~  
14 ~~included in the assessment.~~

15 ~~(d) A unit owner who disputes the information in the~~  
16 ~~written statement received from the association pursuant to~~  
17 ~~subsection (c) may request a subsequent written statement that~~  
18 ~~additionally informs the unit owner that:~~

19 ~~(1) Under Hawaii law, a unit owner has no right to~~  
20 ~~withhold common expense assessments for any reason;~~



- 1       ~~(2) A unit owner has a right to demand mediation or~~  
2       ~~arbitration to resolve disputes about the amount or~~  
3       ~~validity of an association's common expense~~  
4       ~~assessment; provided that the unit owner immediately~~  
5       ~~pays the common expense assessment in full and keeps~~  
6       ~~common expense assessments current;~~
- 7       ~~(3) Payment in full of the common expense assessment shall~~  
8       ~~not prevent the owner from contesting the common~~  
9       ~~expense assessment or receiving a refund of amounts~~  
10       ~~not owed; and~~
- 11       ~~(4) If the unit owner contests any penalty or fine, late~~  
12       ~~fee, lien filing fee, or other charges included in the~~  
13       ~~assessment, except common expense assessments, the~~  
14       ~~unit owner may demand mediation as provided in~~  
15       ~~subsection (g) prior to paying those charges.~~
- 16       ~~(e) No unit owner shall withhold any common expense~~  
17       ~~assessment claimed by the association. Nothing in this section~~  
18       ~~shall limit the rights of an owner to the protection of all fair~~  
19       ~~debt collection procedures mandated under federal and state law.~~
- 20       ~~(f) A unit owner who pays an association the full amount~~  
21       ~~of the common expenses claimed by the association may file in~~



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

20 ~~(g) A unit owner who contests the amount of any attorneys'~~  
21 ~~fees and costs, penalties or fines, late fees, lien filing fees,~~





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



1        (c) A unit owner shall have no right to withhold payment  
2 of a common expense assessment for any reason; provided that a  
3 unit owner may dispute the obligation to pay a common expense  
4 assessment after payment in full of the assessment.

5        (d) A unit owner may dispute other assessments, apart from  
6 a common expense assessment, before making payment. A unit  
7 owner who disputes an assessment may request a written statement  
8 clearly detailing:

9            (1) The common expenses included in an assessment and  
10            stating the due date of each amount of common expense  
11            assessed;

12            (2) The amount of any charge included in the assessment  
13            that is not imposed on all unit owners as a common  
14            expense, such as a fine or penalty, or a late fee or  
15            filing fee; and

16            (3) The amount of attorneys' fees and costs, if any,  
17            included in the assessment.

18 In responding to the request, the association shall include a  
19 disclaimer that under state law, a unit owner has no right to  
20 withhold payment of a common expense assessment for any reason,  
21 but that the obligation to pay a common expense assessment may



1 be disputed after the assessment has been paid in full. The  
2 association shall also include in the disclaimer that a unit  
3 owner may dispute other assessments, apart from a common expense  
4 assessment, before making payment, and that the rights to  
5 contest assessments are described in section 514B-D and this  
6 section.

7 (e) Nothing in this section shall limit the rights of an  
8 owner to the protection of all fair debt collection procedures  
9 mandated under federal and state law.

10 (f) A unit owner may file an action in any court with  
11 jurisdiction, or may request mediation, to contest:

12 (1) A paid assessment; or

13 (2) An unpaid assessment other than a common expense  
14 assessment or fine. Fines shall be subject to section  
15 514B-B.

16 A unit owner who elects to request mediation shall do so  
17 within thirty days after the date of the statement described in  
18 subsection (d). A timely demand for mediation shall stay an  
19 association's effort to collect the contested assessment for  
20 sixty days.



1       The unit owner shall be entitled to a refund of any amounts  
2 paid that are determined to have not been owed.

3       (g) An association may defend an assessment in court and  
4 in mediation. The association may proceed to collect an unpaid  
5 assessment by any legal means except when collection efforts are  
6 stayed pursuant to subsection (f).

7       (h) In conjunction with or as an alternative to  
8 foreclosure proceedings under subsection (a), where a unit is  
9 owner-occupied, the association may authorize its managing agent  
10 or board to, after sixty days' written notice to the unit owner  
11 and to the unit's first mortgagee of the nonpayment of the  
12 unit's share of the common expenses, terminate the delinquent  
13 unit's access to the common elements and cease supplying a  
14 delinquent unit with any and all services normally supplied or  
15 paid for by the association. Any terminated services and  
16 privileges shall be restored upon payment of all delinquent  
17 assessments but need not be restored until payment in full is  
18 received.

19       (i) Before the board or managing agent may take the  
20 actions permitted under subsection (h), the board shall adopt a  
21 written policy providing for [~~such~~] the actions and have the



1 policy approved by a majority vote of the unit owners at an  
2 annual or special meeting of the association or by the written  
3 consent of a majority of the unit owners.

4 (j) Subject to this subsection, and subsections (k) and  
5 (l), the board may specially assess the amount of the unpaid  
6 regular monthly common assessments for common expenses against a  
7 mortgagee or other purchaser who, in a judicial or nonjudicial  
8 power of sale foreclosure, purchases a delinquent unit; provided  
9 that the mortgagee or other purchaser may require the  
10 association to provide at no charge a notice of the  
11 association's intent to claim lien against the delinquent unit  
12 for the amount of the special assessment, prior to the  
13 subsequent purchaser's acquisition of title to the delinquent  
14 unit. The notice shall state the amount of the special  
15 assessment, how that amount was calculated, and the legal  
16 description of the unit.

17 (k) The amount of the special assessment assessed under  
18 subsection (j) shall not exceed the total amount of unpaid  
19 regular monthly common assessments that were assessed during the  
20 six months immediately preceding the completion of the judicial  
21 or nonjudicial power of sale foreclosure.



1 (1) For purposes of subsections (j) and (k), the following  
2 definitions shall apply, unless the context requires otherwise:

3 "Completion" means:

4 (1) In a nonjudicial power of sale foreclosure, when the  
5 affidavit after public sale is recorded pursuant to  
6 section 667-33; and

7 (2) In a judicial foreclosure, when a purchaser is deemed  
8 to acquire title pursuant to subsection (b).

9 "Regular monthly common assessments" does not include:

10 (1) Any other special assessment, except for a special  
11 assessment imposed on all units as part of a budget  
12 adopted pursuant to section 514B-148, including  
13 commercial property assessed financing assessments  
14 imposed pursuant to section 196-64.5;

15 (2) Late charges, fines, or penalties;

16 (3) Interest assessed by the association;

17 (4) Any lien arising out of the assessment; or

18 (5) Any fees or costs related to the collection or  
19 enforcement of the assessment, including attorneys'  
20 fees and court costs.



1 (m) The cost of a release of any lien filed pursuant to  
2 this section shall be paid by the party requesting the release.

3 (n) After any judicial or nonjudicial foreclosure  
4 proceeding in which the association acquires title to the unit,  
5 any excess rental income received by the association from the  
6 unit shall be paid to existing lien holders based on the  
7 priority of lien, and not on a pro rata basis, and shall be  
8 applied to the benefit of the unit owner. For purposes of this  
9 subsection, excess rental income shall be any net income  
10 received by the association after a court has issued a final  
11 judgment determining the priority of a senior mortgagee and  
12 after paying, crediting, or reimbursing the association or a  
13 third party for:

- 14 (1) The lien for delinquent assessments pursuant to  
15 subsections (a) and (b);
- 16 (2) Any maintenance fee delinquency against the unit;
- 17 (3) Attorney's fees and other collection costs related to  
18 the association's foreclosure of the unit; or
- 19 (4) Any costs incurred by the association for the rental,  
20 repair, maintenance, or rehabilitation of the unit  
21 while the association is in possession of the unit



1 including monthly association maintenance fees,  
 2 management fees, real estate commissions, cleaning and  
 3 repair expenses for the unit, and general excise taxes  
 4 paid on rental income;

5 provided that the lien for delinquent assessments under  
 6 paragraph (1) shall be paid, credited, or reimbursed first."

7 SECTION 12. Section 514B-148, Hawaii Revised Statutes, is  
 8 amended by amending subsection (g) to read as follows:

9 "(g) Subject to the procedures of section [~~514B-157~~]  
 10 514B-A and any rules adopted by the commission, any unit owner  
 11 whose association board fails to comply with this section may  
 12 enforce compliance by the board. In any proceeding to enforce  
 13 compliance, a board that has not prepared an annual operating  
 14 budget and reserve study shall have the burden of proving it has  
 15 complied with this section."

16 SECTION 13. Section 514B-157, Hawaii Revised Statutes, is  
 17 repealed.

18 [~~514B-157~~] ~~Attorneys' fees, delinquent assessments, and~~  
 19 ~~expenses of enforcement.~~ (a) ~~All costs and expenses, including~~  
 20 ~~reasonable attorneys' fees, incurred by or on behalf of the~~  
 21 ~~association for:~~





1       ~~(1) Collecting any delinquent assessments, including~~  
2       ~~commercial property assessed financing assessments~~  
3       ~~imposed pursuant to section 196 64.5, against any~~  
4       ~~owner's unit;~~

5       ~~(2) Foreclosing any lien thereon; or~~

6       ~~(3) Enforcing any provision of the declaration, bylaws,~~  
7       ~~house rules, and this chapter, or the rules of the~~  
8       ~~real estate commission;~~

9       ~~against an owner, occupant, tenant, employee of an owner, or any~~  
10       ~~other person who may in any manner use the property, shall be~~  
11       ~~promptly paid on demand to the association by the person or~~  
12       ~~persons; provided that if the claims upon which the association~~  
13       ~~takes any action are not substantiated, all costs and expenses,~~  
14       ~~including reasonable attorneys' fees, incurred by any applicable~~  
15       ~~person or persons as a result of the action of the association,~~  
16       ~~shall be promptly paid on demand to the person or persons by the~~  
17       ~~association.~~

18       ~~(b) If any claim by an owner is substantiated in any~~  
19       ~~action against an association, any of its officers or directors,~~  
20       ~~or its board to enforce any provision of the declaration,~~  
21       ~~bylaws, house rules, or this chapter, then all reasonable and~~



1 ~~necessary expenses, costs, and attorneys' fees incurred by an~~  
2 ~~owner shall be awarded to such owner; provided that no such~~  
3 ~~award shall be made in any derivative action unless:~~

4 ~~(1) The owner first shall have demanded and allowed~~  
5 ~~reasonable time for the board to pursue such~~  
6 ~~enforcement; or~~

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

10 ~~If any claim by an owner is not substantiated in any court~~  
11 ~~action against an association, any of its officers or directors,~~  
12 ~~or its board to enforce any provision of the declaration,~~  
13 ~~bylaws, house rules, or this chapter, then all reasonable and~~  
14 ~~necessary expenses, costs, and attorneys' fees incurred by an~~  
15 ~~association shall be awarded to the association, unless before~~  
16 ~~filing the action in court the owner has first submitted the~~  
17 ~~claim to mediation, or to arbitration under subpart D, and made~~  
18 ~~a good faith effort to resolve the dispute under any of those~~  
19 ~~procedures." ]~~

20 SECTION 14. Chapter 514B, part VI, subpart D, Hawaii  
21 Revised Statutes, is repealed.



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

7 SECTION 17. This Act shall take effect upon its approval.

8

INTRODUCED BY:  \_\_\_\_\_

# S.B. NO. 146

**Report Title:**

Condominiums; Alternative Dispute Resolution; Mediation

**Description:**

Amends the conditions and procedures of alternative dispute resolution methods for condominium-related disputes.

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

