

ACT 196

H.B. NO. 1874

A Bill for an Act Relating to Condominiums.

Be It Enacted by the Legislature of the State of Hawaii:

SECTION 1. The legislature finds that mediation is an existing and appropriate method of alternative dispute resolution to address condominium related disputes. While the courts are available to resolve conflicts, condominium law should provide incentives for the meaningful use of alternative dispute resolution mechanisms. Thus, the legislature further finds that clarifying the conditions that mandate mediation and exceptions to mandatory mediation is appropriate. The legislature notes that the mandatory mediation proposed by this Act is intended to require parties to resolve condominium related disputes through the use of alternative dispute resolution.

The legislature also finds that authorizing the condominium education trust fund, which is currently dedicated to supporting mediation, to also be used for voluntary binding arbitration will further encourage the use of alternative dispute resolution for condominium related disputes.

Accordingly, the purpose of this Act is to:

- (1) Expand the scope of the condominium education trust fund to cover voluntary binding arbitration between interested parties; and
- (2) Amend the conditions that mandate mediation and exceptions to mandatory mediation.

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

“§514B- Voluntary binding arbitration. (a) Any parties permitted to mediate condominium related disputes pursuant to section 514B-161 may agree to enter into voluntary binding arbitration, which may be supported with funds from the condominium education trust fund pursuant to section 514B-71; provided that voluntary binding arbitration under this section may be supported with funds from the condominium education trust fund only after the parties have first attempted evaluative mediation.

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

- (1) Shall include a fee of \$175 to be paid by each party to the arbitrator;
- (2) Shall receive no more from the fund than is appropriate under the circumstances, and in no event more than \$6,000 total; and
- (3) May include issues and parties in addition to those identified in subsection (a); provided that a unit owner or a developer and board are parties to the arbitration at all times and the unit owner or developer and the board mutually consent in writing to the addition of the issues and parties.”

SECTION 3. Section 514B-71, Hawaii Revised Statutes, is amended by amending subsection (a) to read as follows:

“(a) The commission shall establish a condominium education trust fund that the commission shall use for educational purposes. Educational purposes shall include financing or promoting:

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

- (2) The improvement and more efficient administration of associations;
- (3) Expedious and inexpensive procedures for resolving association disputes; [and]
- (4) Support for mediation of condominium related disputes[-]; and
- (5) Support for voluntary binding arbitration between parties in condominium related disputes, pursuant to section 514B-”

SECTION 4. Section 514B-72, Hawaii Revised Statutes, is amended by amending subsection (a) to read as follows:

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

- (1) A condominium education trust fund fee within one year after the recordation of the purchase of the first unit or within thirty days of the association’s first meeting, and thereafter, on or before June 30 of every odd-numbered year, as prescribed by rules adopted pursuant to chapter 91; and
- (2) Beginning with the July 1, 2015, biennium registration, an additional annual condominium education trust fund fee in an amount equal to the product of \$1.50 times the number of condominium units included in the registered project or association to be dedicated to supporting mediation or voluntary binding arbitration of condominium related disputes. The additional condominium education trust fund fee shall total \$3 per unit until the commission adopts rules pursuant to chapter 91. On June 30 of every odd-numbered year, any unexpended additional amounts paid into the condominium education trust fund and initially dedicated to supporting mediation or voluntary binding arbitration of condominium related disputes, as required by this paragraph, shall be used for educational purposes as provided in section 514B-71(a)(1), (2), and (3).”

SECTION 5. Section 514B-161, Hawaii Revised Statutes, is amended to read as follows:

~~“§514B-161 Mediation. [(a) If an apartment owner or the board of directors requests mediation of a dispute involving the interpretation or enforcement of the association of apartment owners’ declaration, bylaws, or house rules, the other party in the dispute shall be required to participate in mediation. Each party shall be wholly responsible for its own costs of participating in mediation, unless both parties agree that one party shall pay all or a specified portion of the mediation costs. If a party refuses to participate in the mediation of a particular dispute, a court may take this refusal into consideration when awarding expenses, costs, and attorneys’ fees.~~

~~(b) Nothing in subsection (a) shall be interpreted to mandate the mediation of any dispute involving:~~

- ~~(1) Actions seeking equitable relief involving threatened property damage or the health or safety of association members or any other person;~~
- ~~(2) Actions to collect assessments;~~
- ~~(3) Personal injury claims; or~~
- ~~(4) Actions against an association, a board, or one or more directors, officers, agents, employees, or other persons for amounts in excess of \$2,500 if insurance coverage under a policy of insurance procured by the association or its board would be unavailable for defense or judgment because mediation was pursued.~~

~~(e) If any mediation under this section is not completed within two months from commencement, no further mediation shall be required unless agreed to by the parties.]~~

(a) The mediation of a dispute between a unit owner and the board, unit owner and the managing agent, board members and the board, or directors and managing agents and the board shall be mandatory upon written request to the other party when:

- (1) The dispute involves the interpretation or enforcement of the association's declaration, bylaws, or house rules;
- (2) The dispute falls outside the scope of subsection (b);
- (3) The parties have not already mediated the same or a substantially similar dispute; and
- (4) An action or an arbitration concerning the dispute has not been commenced.

(b) The mediation of a dispute between a unit owner and the board, unit owner and the managing agent, board members and the board, or directors and managing agents and the board shall not be mandatory when the dispute involves:

- (1) Threatened property damage or the health or safety of unit owners or any other person;
- (2) Assessments;
- (3) Personal injury claims; or
- (4) Matters that would affect the availability of any coverage pursuant to an insurance policy obtained by or on behalf of an association.

(c) If evaluative mediation is requested in writing by one of the parties pursuant to subsection (a), the other party cannot choose to do facilitative mediation instead, and any attempt to do so shall be treated as a rejection to mediate.

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

- (1) Mediation of the dispute is mandatory pursuant to subsection (a);
- (2) A written request for mediation has been delivered to and received by the other party; and
- (3) The parties have not agreed to a mediator and a mediation date within forty-five days after a party receives a written request for mediation.

(e) Any application made to the circuit court pursuant to subsection (d) shall be made and heard in a summary manner and in accordance with procedures for the making and hearing of motions. The prevailing party shall be awarded its attorneys' fees and costs in an amount not to exceed \$1,500.

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

- (1) A written agreement providing otherwise that is signed by the parties;
- (2) An order of a court in connection with the final disposition of a claim that was submitted to mediation;
- (3) An award of an arbitrator in connection with the final disposition of a claim that was submitted to mediation; or
- (4) An order of the circuit court in connection with compelled mediation in accordance with subsection (e).

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

- (1) Shall include a fee of \$375 to be paid by each party to the mediator;
 - (2) Shall receive no more from the fund than is appropriate under the circumstances, and in no event more than \$3,000 total;
 - (3) May include issues and parties in addition to those identified in subsection (a); provided that a unit owner or a developer and board are parties to the mediation at all times and the unit owner or developer and the board mutually consent in writing to the addition of the issues and parties; and
 - (4) May include an evaluation by the mediator of any claims presented during the mediation.
- (h) A court or an arbitrator with jurisdiction may consider a timely request to stay any action or proceeding concerning a dispute that would be subject to mediation pursuant to subsection (a) in the absence of the action or proceeding, and refer the matter to mediation; provided that:
- (1) The court or arbitrator determines that the request is made in good faith and a stay would not be prejudicial to any party; and
 - (2) No stay shall exceed a period of ninety days.”

SECTION 6. Act 187, Session Laws of Hawaii 2013, is amended by amending section 5 to read as follows:

“SECTION 5. The department of commerce and consumer affairs professional and vocational licensing division’s budget ceiling shall be amended to reflect the additional annual condominium education trust fund fee required by section 514B-72(a)(2), Hawaii Revised Statutes, and paid into the condominium education trust fund, established by section 514B-71, Hawaii Revised Statutes. On June 30 of every odd-numbered year, any unexpended additional amounts paid into the condominium education trust fund and initially dedicated to supporting mediation or voluntary binding arbitration, until June 30, 2023, of condominium related disputes, as required by section 514B-72(a)(2), Hawaii Revised Statutes, shall be used for educational purposes as provided in section 514B-71(a)(1), (2), and (3), Hawaii Revised Statutes.”

SECTION 7. This Act does not affect rights and duties that matured, penalties that were incurred, and proceedings that were begun before its effective date.

SECTION 8. Statutory material to be repealed is bracketed and stricken. New statutory material is underscored.¹

SECTION 9. This Act shall take effect on January 2, 2019, and, except for section 6, shall be repealed on June 30, 2023; provided that sections 514B-71(a), 514B-72(a), and 514B-161, Hawaii Revised Statutes, shall be reenacted in the form in which they read on January 1, 2019.

(Approved July 10, 2018.)

Note

1. Edited pursuant to HRS §23G-16.5.