
A BILL FOR AN ACT

RELATING TO CONDOMINIUMS.

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

1 SECTION 1. Section 514A-121.5, Hawaii Revised Statutes, is
2 amended to read as follows:

3 "**§514A-121.5 Mediation; condominium management dispute**
4 **resolution; request for hearing; hearing.** (a) If an apartment
5 owner or the board of directors requests mediation of a dispute
6 involving the interpretation or enforcement of the association of
7 apartment owners' declaration, bylaws, ~~[or]~~ house rules, or a
8 matter involving section 514A-82(b)(1) to (13), 514A-82.1,
9 514A-82.15, 514A-82.3, 514A-82.5, 514A-82.6, 514A-83, 514A-83.1,
10 514A-83.2, 514A-83.3, 514A-83.4, 514A-83.5, 514A-84, 514A-84.5, or
11 514A-92.5, the other party in the dispute shall be required to
12 participate in mediation. Upon being selected to provide
13 mediation services, the mediator or the mediation service shall
14 notify the commission in writing of the requested mediation
15 proceeding. Each party shall be wholly responsible for its own
16 costs of participating in mediation; unless at the end of the
17 mediation process, both parties agree that one party shall pay all
18 or a specified portion of the mediation costs. If an apartment



1 owner or the board of directors refuses to participate in the
2 mediation of a particular dispute, a court may take this refusal
3 into consideration when awarding expenses, costs, and attorney's
4 fees.

5 The mediation service shall notify the parties in writing of
6 the disposition of the mediation, and shall specify the
7 termination date thereof. The mediator or mediation service shall
8 notify the commission in writing of the disposition of the
9 mediation proceeding, including failure to reach a disposition,
10 within a reasonable time after the disposition of the mediation.

11 (b) If a dispute is not resolved by mediation as provided in
12 this section, any party to that mediation may file for arbitration
13 no sooner than thirty days from the termination date of the
14 mediation.

15 ~~[(b)]~~ (c) If a dispute is not resolved by mediation as
16 provided in subsection (a), ~~[in addition to any other legal~~
17 ~~remedies that may be available,]~~ any party to that ~~[participated~~
18 ~~in the]~~ mediation may file a request for a hearing with the office
19 of administrative hearings, department of commerce and consumer
20 affairs, as follows:

21 (1) The party requesting the hearing ~~[must]~~ shall be a
22 board of directors of a duly registered association of



1 apartment owners, or an apartment owner that is a
2 member of [~~a duly registered~~] an association[~~+~~] duly
3 registered pursuant to section 514A-95.1;

4 (2) The request for hearing [~~must~~] shall be filed within
5 thirty days from the [~~final day of mediation~~]
6 termination date as specified in writing by the
7 mediation service;

8 (3) The request for hearing [~~must~~] shall name one or more
9 parties [~~that participated~~] in the mediation as an
10 adverse party and identify the statutory provisions in
11 dispute; and

12 (4) The subject matter of the hearing before the [~~hearing~~]
13 hearings officer may include any matter that was the
14 subject of the mediation pursuant to subsection (a).

15 [~~(e)~~] (d) For purposes of this section, the office of
16 administrative [~~hearing~~] hearings for the department of commerce
17 and consumer affairs shall accept no more than thirty requests for
18 hearing per fiscal year under this section.

19 [~~(d)~~] (e) The party requesting the hearing shall pay a
20 filing fee of \$25 to the department of commerce and consumer
21 affairs, and the failure to do so shall result in the request for
22 hearing being rejected for filing. All other parties shall file a



1 response, accompanied by a filing fee of \$25 to the department of
2 commerce and consumer affairs, within twenty days of being served
3 with the request for hearing.

4 ~~[(e)]~~ (f) The hearings officers appointed by the director of
5 commerce and consumer affairs pursuant to section 26-9(f) shall
6 have jurisdiction to review any request for hearing filed under
7 subsection ~~[(b)-.]~~ (c). The hearings officers shall have the power
8 to issue subpoenas, administer oaths, hear testimony, find facts,
9 make conclusions of law, and issue written decisions that shall be
10 final and conclusive, unless a party adversely affected by the
11 decision files an appeal in the circuit court under section 91-14.

12 ~~[(f)]~~ (g) Chapter 16-201, Hawaii Administrative Rules, shall
13 govern all proceedings brought under ~~[this section.]~~ subsection
14 (c). The burden of proof, including the burden of producing the
15 evidence and the burden of persuasion, shall be upon the party
16 initiating the proceeding. Proof of a matter shall be by a
17 preponderance of the evidence.

18 ~~[(g)]~~ (h) Hearings to review and make determinations upon
19 any requests for hearings filed under subsection ~~[(b)]~~ (c) shall
20 commence within sixty days following the receipt of the request
21 for hearing. The ~~[hearing]~~ hearings officer shall issue written



1 findings of fact, conclusions of law, and an order as
2 expeditiously as practicable after the hearing has been concluded.

3 ~~[(h)]~~ (i) Each party to the hearing shall bear the party's
4 own costs, including attorney's fees, unless otherwise ordered by
5 the ~~[hearing]~~ hearings officer.

6 ~~[(i)]~~ (j) Any party to a ~~[proceedings under this section]~~
7 proceeding brought under subsection (c) who is aggrieved by a
8 final decision of a hearings officer may apply for judicial review
9 of that decision pursuant to section 91-14; provided that any
10 party seeking judicial review pursuant to section 91-14 shall be
11 responsible for the costs of preparing the record on appeal,
12 including the cost of preparing the transcript of the hearing.

13 ~~[(j)]~~ (k) The department of commerce and consumer affairs
14 may adopt rules and forms, pursuant to chapter 91, to effectuate
15 the purpose of this section and to implement its provisions."

16 SECTION 2. Section 514B-161, Hawaii Revised Statutes, is
17 amended to read as follows:

18 "**§514B-161 Mediation~~[-]~~; condominium management dispute**
19 **resolution; request for hearing; hearing.** (a) If ~~[an~~
20 ~~apartment]~~ a unit owner or the board of directors requests
21 mediation of a dispute involving the interpretation or
22 enforcement of the ~~[association of apartment owners']~~



1 association's declaration, bylaws, or house rules, or a matter
2 involving part VI, the other party in the dispute shall be
3 required to participate in mediation. Upon being selected to
4 provide mediation services, the mediator or the mediation service
5 shall notify the commission in writing of the requested mediation
6 proceeding. Each party shall be wholly responsible for its own
7 costs of participating in mediation[~~7~~]; unless at the end of the
8 mediation process, both parties agree that one party shall pay
9 all or a specified portion of the mediation costs. If a [party]
10 unit owner or the board of directors refuses to participate in
11 the mediation of a particular dispute, a court may take this
12 refusal into consideration when awarding expenses, costs, and
13 attorneys' fees.

14 The mediator or mediation service shall notify the parties in
15 writing of the disposition of the mediation, and shall specify the
16 termination date thereof. The mediator or mediation service shall
17 notify the commission in writing of the disposition of the
18 mediation proceeding, including failure to reach a disposition,
19 within a reasonable time after the disposition of the mediation.

20 ~~[(b) Nothing in subsection (a) shall be interpreted to~~
21 ~~mandate the mediation of any dispute involving.~~



1 ~~(1) Actions seeking equitable relief involving threatened~~
2 ~~property damage or the health or safety of association~~
3 ~~members or any other person;~~

4 ~~(2) Actions to collect assessments;~~

5 ~~(3) Personal injury claims; or~~

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

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

15 (b) If a dispute is not resolved by mediation as provided in
16 this section, any party to that mediation may file for arbitration
17 no sooner than thirty days from the termination date of the
18 mediation.

19 (c) If a dispute is not resolved by mediation as provided in
20 subsection (a), any party to that mediation may file a request for
21 a hearing with the office of administrative hearings of the
22 department of commerce and consumer affairs, as follows:



- 1 (1) The party requesting the hearing shall be a board of
2 directors of a duly registered association or a unit
3 owner that is a member of a duly registered
4 association pursuant to section 514B-103;
- 5 (2) The request for hearing shall be filed within thirty
6 days from the termination date as specified in writing
7 by the mediator;
- 8 (3) The request for hearing shall name one or more parties
9 in the mediation as an adverse party and identify the
10 statutory provisions in dispute; and
- 11 (4) The subject matter of the hearing before the hearings
12 officer may include any matter that was the subject of
13 the mediation pursuant to subsection (a).
- 14 (d) For purposes of this section, the office of
15 administrative hearings of the department of commerce and consumer
16 affairs shall accept no more than thirty requests for hearing per
17 fiscal year under this section.
- 18 (e) The party requesting the hearing shall pay a filing fee
19 of \$25 to the department of commerce and consumer affairs, and the
20 failure to do so shall result in the request for hearing being
21 rejected for filing. All other parties shall file a response,
22 accompanied by a filing fee of \$25, with the department of



1 commerce and consumer affairs within twenty days of being served
2 with the request for hearing.

3 (f) The hearings officers appointed by the director of
4 commerce and consumer affairs pursuant to section 26-9(f) shall
5 have jurisdiction to review any request for hearing filed under
6 subsection (c). The hearings officers shall have the power to
7 issue subpoenas, administer oaths, hear testimony, find facts,
8 make conclusions of law, and issue written decisions that shall be
9 final and conclusive, unless a party adversely affected by the
10 decision files an appeal in the circuit court under section 91-14.

11 (g) The department of commerce and consumer affairs' rules
12 of practice and procedure shall govern all proceedings brought
13 under subsection (c). The burden of proof, including the burden
14 of producing the evidence and the burden of persuasion, shall be
15 upon the party initiating the proceeding. Proof of a matter shall
16 be by a preponderance of the evidence.

17 (h) Hearings to review and make determinations upon any
18 requests for hearings filed under subsection (c) shall commence
19 within sixty days following the receipt of the request for
20 hearing. The hearings officer shall issue written findings of
21 fact, conclusions of law, and an order as expeditiously as
22 practicable after the hearing has been concluded.



1 (i) Each party to the hearing shall bear the party's own
2 costs, including attorney's fees, unless otherwise ordered by the
3 hearings officer.

4 (j) Any party to a proceeding brought under subsection (c)
5 who is aggrieved by a final decision of a hearings officer may
6 apply for judicial review of that decision pursuant to section 91-
7 14; provided that any party seeking judicial review pursuant to
8 section 91-14 shall be responsible for the costs of preparing the
9 record on appeal, including the cost of preparing the transcript
10 of the hearing.

11 (k) The department of commerce and consumer affairs may
12 adopt rules and forms, pursuant to chapter 91, to effectuate the
13 purpose of this section and to implement its provisions."

14 SECTION 3. Statutory material to be repealed is bracketed
15 and stricken. New statutory material is underscored.

16 SECTION 4. This Act shall take effect on July 1, 2008;
17 provided that the amendments to sections 514A-121.5(b) to (j),
18 Hawaii Revised Statutes, in section 1 of this Act shall be
19 repealed on June 30, 2009.



Report Title:

Condominiums; Mediation

Description:

Specifies dispute resolution parameters related to the interpretation or enforcement of a condominium association's bylaws, house rules, or certain other matters. Allows parties whose dispute is not resolved by mediation to file for arbitration no sooner than 30 days from the termination date of mediation. Makes more widely available the option for an administrative hearing. (HB3331 CD1)

