
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, ~~[e]~~ 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 For the purposes of this subsection, participation in
6 mediation is deemed to have occurred when a party receives written
7 notice of the mediation proceedings from the mediator, whether or
8 not the party chooses to attend the mediation. The mediation
9 service shall notify the parties in writing of the disposition of
10 the mediation, and shall specify the termination date thereof.
11 The mediation service or mediator shall notify the commission in
12 writing of the disposition of the mediation proceeding, including
13 failure to reach a disposition and reasons for failure to complete
14 mediation, within a reasonable time after the disposition of the
15 mediation.

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

20 ~~[(b)]~~ (c) If a dispute is not resolved by mediation as
21 provided in subsection (a), ~~[in addition to any other legal~~
22 ~~remedies that may be available,]~~ any party to that ~~[participated~~



1 ~~in the~~] mediation may file a request for a hearing with the office
2 of administrative hearings, department of commerce and consumer
3 affairs, as follows:

4 (1) The party requesting the hearing [~~must~~] shall be a
5 board of directors of a duly registered association of
6 apartment owners, or an apartment owner that is a
7 member of [~~a duly registered~~] an association[+] duly
8 registered pursuant to section 514A-95.1;

9 (2) The request for hearing [~~must~~] shall be filed within
10 thirty days from the [~~final day of mediation,~~]
11 termination date as specified in writing by the
12 mediation service;

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

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

20 [+e)] (d) For purposes of this section, the office of
21 administrative [~~hearing~~] hearings for the department of commerce



1 and consumer affairs shall accept no more than thirty requests for
2 hearing per fiscal year under this section.

3 ~~[(d)]~~ (e) The party requesting the hearing shall pay a
4 filing fee of \$25 to the department of commerce and consumer
5 affairs, and the failure to do so shall result in the request for
6 hearing being rejected for filing. All other parties shall file a
7 response, accompanied by a filing fee of \$25 to the department of
8 commerce and consumer affairs, within twenty days of being served
9 with the request for hearing.

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

18 ~~[(f)]~~ (g) Chapter 16-201, Hawaii Administrative Rules, shall
19 govern all proceedings brought under this section. The burden of
20 proof, including the burden of producing the evidence and the
21 burden of persuasion, shall be upon the party initiating the



1 proceeding. Proof of a matter shall be by a preponderance of the
2 evidence.

3 ~~[(g)]~~ (h) Hearings to review and make determinations upon
4 any requests for hearings filed under subsection (b) shall
5 commence within sixty days following the receipt of the request
6 for hearing. The ~~[hearing]~~ hearings officer shall issue written
7 findings of fact, conclusions of law, and an order as
8 expeditiously as practicable after the hearing has been concluded.

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

12 ~~[(i)]~~ (j) Any party to a proceedings under this section who
13 is aggrieved by a final decision of a hearings officer may apply
14 for judicial review of that decision pursuant to section 91-14;
15 provided that any party seeking judicial review pursuant to
16 section 91-14 shall be responsible for the costs of preparing the
17 record on appeal, including the cost of preparing the transcript
18 of the hearing.

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



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

3 **"§514B-161 Mediation[~~+~~]; condominium management dispute**
4 **resolution; request for hearing; hearing.** (a) If [~~an~~
5 ~~apartment]~~ a unit owner or the board of directors requests
6 mediation of a dispute involving the interpretation or
7 enforcement of the [~~association of apartment owners'~~
8 association's declaration, bylaws, or house rules, or a matter
9 involving part VI, the other party in the dispute shall be
10 required to participate in mediation. Upon being selected to
11 provide mediation services, the mediator or the mediation service
12 shall notify the commission in writing of the requested mediation
13 proceeding. Each party shall be wholly responsible for its own
14 costs of participating in mediation[~~+~~]; unless at the end of the
15 mediation process, both parties agree that one party shall pay
16 all or a specified portion of the mediation costs. If a [~~party]~~
17 unit owner or the board of directors refuses to participate in
18 the mediation of a particular dispute, a court may take this
19 refusal into consideration when awarding expenses, costs, and
20 attorneys' fees.

21 For the purposes of this subsection, participation in
22 mediation is deemed to have occurred when a party receives written



1 notice of the mediation proceedings from the mediator, whether or
2 not the party chooses to attend the mediation. The mediator or
3 mediation service shall notify the parties in writing of the
4 disposition of the mediation, and shall specify the termination
5 date thereof. The mediation service or mediator shall notify the
6 commission in writing of the disposition of the mediation
7 proceeding, including failure to reach a disposition and reasons
8 for failure to complete mediation, within a reasonable time after
9 the disposition of the mediation.

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

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

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

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

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



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

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

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

12 (1) The party requesting the hearing shall be a board of
13 directors of a duly registered association or a unit
14 owner that is a member of a duly registered
15 association pursuant to section 514B-103;

16 (2) The request for hearing shall be filed within thirty
17 days from the termination date as specified in writing
18 by the mediator;

19 (3) The request for hearing shall name one or more parties
20 in the mediation as an adverse party and identify the
21 statutory provisions in dispute; and



1 (4) The subject matter of the hearing before the hearings
2 officer may include any matter that was the subject of
3 the mediation pursuant to subsection (a).

4 (d) For purposes of this section, the office of
5 administrative hearings of the department of commerce and consumer
6 affairs shall accept no more than thirty requests for hearing per
7 fiscal year under this section.

8 (e) The party requesting the hearing shall pay a filing fee
9 of \$25 to the department of commerce and consumer affairs, and the
10 failure to do so shall result in the request for hearing being
11 rejected for filing. All other parties shall file a response,
12 accompanied by a filing fee of \$25 to the department of commerce
13 and consumer affairs, within twenty days of being served with the
14 request for hearing.

15 (f) The hearings officers appointed by the director of
16 commerce and consumer affairs pursuant to section 26-9(f) shall
17 have jurisdiction to review any request for hearing filed under
18 subsection (b). The hearings officers shall have the power to
19 issue subpoenas, administer oaths, hear testimony, find facts,
20 make conclusions of law, and issue written decisions that shall be
21 final and conclusive, unless a party adversely affected by the
22 decision files an appeal in the circuit court under section 91-14.



1 (g) The department of commerce and consumer affairs' rules
2 of practice and procedure shall govern all proceedings brought
3 under this section. The burden of proof, including the burden of
4 producing the evidence and the burden of persuasion, shall be upon
5 the party initiating the proceeding. Proof of a matter shall be
6 by a preponderance of the evidence.

7 (h) Hearings to review and make determinations upon any
8 requests for hearings filed under subsection (b) shall commence
9 within sixty days following the receipt of the request for
10 hearing. The hearings officer shall issue written findings of
11 fact, conclusions of law, and an order as expeditiously as
12 practicable after the hearing has been concluded.

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

16 (j) Any party to a proceeding under this section who is
17 aggrieved by a final decision of a hearings officer may apply for
18 judicial review of that decision pursuant to section 91-14;
19 provided that any party seeking judicial review pursuant to
20 section 91-14 shall be responsible for the costs of preparing the
21 record on appeal, including the cost of preparing the transcript
22 of the hearing.



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

4 SECTION 3. The real estate commission shall submit to the
5 legislature a written report that includes the following
6 information:

- 7 (1) The number of disputes under sections 514A-121.5 and
8 514B-161, Hawaii Revised Statutes, in which a
9 mediation service or mediator is selected to provide
10 mediation services to resolve disputes;
- 11 (2) The outcomes and disposition of the mediation
12 proceedings pursuant to sections 514A-121.5 and
13 514B-161, Hawaii Revised Statutes, including any
14 failures to reach a disposition and the reasons for
15 the failure;
- 16 (3) A determination of the effectiveness and impact of
17 mediation proceedings to resolve disputes pursuant to
18 sections 514A-121.5 and 514B-161, Hawaii Revised
19 Statutes, and any recommendations to improve the
20 mediation option to resolve disputes involving the
21 interpretation or enforcement of association
22 declaration, bylaws, or house rules; and



1 (4) Any proposed legislation.

2 The real estate commission shall submit the written report to
3 the legislature no later than twenty days prior to the 2009
4 regular session.

5 SECTION 4. Statutory material to be repealed is bracketed
6 and stricken. New statutory material is underscored.

7 SECTION 5. This Act shall take effect upon its approval;
8 provided that the amendments to sections 514A-121.5(b) to (j),
9 Hawaii Revised Statutes, in section 2 of this Act shall be
10 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. Requires the real estate commission to submit a written report to the legislature regarding disputes handled through mediation. (SD1)

