

STAND. COM. REP. NO.

588

Honolulu, Hawaii

February 17, 2017

RE: H.B. No. 1499

H.D. 1

Honorable Joseph M. Souki
Speaker, House of Representatives
Twenty-Ninth State Legislature
Regular Session of 2017
State of Hawaii

Sir:

Your Committee on Consumer Protection & Commerce, to which was referred H.B. No. 1499 entitled:

"A BILL FOR AN ACT RELATING TO CONDOMINIUM ASSOCIATIONS,"

begs leave to report as follows:

The purpose of this measure is to improve the process of dispute resolution between condominium owners and their boards by allowing:

- (1) Condominium Education Trust Fund moneys to be used to support mediation of disputes among condominium board members or disputes involving the condominium association managing agent and to pay for arbitrator's fees; and
- (2) Either party involved in a condominium dispute where mediation has failed to elect to pursue binding arbitration.

The Hawaii Council of Associations of Apartment Owners dba Hawaii Council of Community Associations, Mauna Luan, Associa, and several individuals testified in support of this measure. The Hawaii Chapter of the Community Associations Institute Legislative Action Committee, Hawaiian Properties, Hu'i 'Oia'i'o, and two individuals testified in opposition to this measure. The Hawaii Real Estate Commission provided comments.

HB1499 HD1 HSCR CPC HMS 2017-2237-1



Your Committee notes that, according to the Hawaii Council of Associations of Apartment Owners, association boards often delay or refuse to participate in mediation and arbitration to resolve disputes despite statutorily being required to do so. During discussion at the public hearing, your Committee was informed that, at times, this also applied to unit owners. While the Council suggested imposing a mandatory award of attorney's fees or costs incurred to compel mediation or arbitration as a penalty, your Committee notes that the prevailing party in such a situation is already entitled to these fees and costs. As such, your Committee finds that the imposition of more severe penalties for noncompliance with arbitration or mediation requirements is warranted in light of the Legislature's preference for the use of alternative dispute resolution.

Your Committee has amended this measure by:

- (1) Inserting a purpose section;
- (2) Deleting provisions and references relating to Condominium Property Regimes under Chapter 514A, Hawaii Revised Statutes, as the Real Estate Commission noted that these provisions and references are obsolete;
- (3) Deleting language specifying that mediation of condominium related disputes includes disputes among members of the board and disputes involving the association managing agent as the Real Estate Commission noted that the application of the evaluative mediation program funded through the Condominium Education Trust Fund has been broadened to include any party to a dispute and this language is no longer necessary;
- (4) Deleting language allowing either party involved in a condominium dispute where mediation has failed to elect to pursue binding arbitration;
- (5) Stipulating that moneys in the Condominium Education Trust Fund shall only be used to pay arbitrator's fees if all parties to the arbitration agree that the arbitrator's decision shall be binding and the parties waive their rights to trial de novo;



- (6) Imposing penalties on parties involved in a condominium dispute for failure to comply with the statutorily established mediation and arbitration process for condominium disputes;
- (7) Changing its effective date to July 1, 2112, to facilitate further discussion; and
- (8) Making technical, nonsubstantive amendments for clarity, consistency, and style

As affirmed by the record of votes of the members of your Committee on Consumer Protection & Commerce that is attached to this report, your Committee is in accord with the intent and purpose of H.B. No. 1499, as amended herein, and recommends that it pass Second Reading in the form attached hereto as H.B. No. 1499, H.D. 1, and be referred to your Committee on Finance.

Respectfully submitted on
behalf of the members of the
Committee on Consumer
Protection & Commerce,



ANGUS L.K. MCKELVEY, Chair



Record of Votes of the Committee on Consumer Protection & Commerce

Bill/Resolution No.: HB 1499	Committee Referral: CPC FIN	Date: 2/13/17		
<input type="checkbox"/> The committee is reconsidering its previous decision on the measure.				
The recommendation is to: <input type="checkbox"/> Pass, unamended (as is) <input checked="" type="checkbox"/> Pass, with amendments (HD) <input type="checkbox"/> Hold <input type="checkbox"/> Pass short form bill with HD to recommit for future public hearing (recommit)				
CPC Members	Ayes	Ayes (WR)	Nays	Excused
1. McKELVEY, Angus L.K. (C)	✓			
2. ICHIYAMA, Linda (VC)	✓			
3. AQUINO, Henry J.C.	✓			
4. ITO, Ken	✓			
5. SAY, Calvin K.Y.	✓			
6. TAKAYAMA, Gregg	✓			
7. TODD, Chris	✓			
8. YAMANE, Ryan I.	✓			
9. FUKUMOTO, Beth	✓			
TOTAL (9)	9	0	0	0
The recommendation is: <input checked="" type="checkbox"/> Adopted <input type="checkbox"/> Not Adopted If joint referral, _____ did not support recommendation. <small style="margin-left: 200px;">committee acronym(s)</small>				
Vice Chair's or designee's signature:				
Distribution: Original (White) – Committee Duplicate (Yellow) – Chief Clerk's Office Duplicate (Pink) – HMSO				