



## Learn more about the Real Estate Branch (REB) of the Department of Commerce and Consumer Affairs

Check out the REB website [www.hawaii.gov/hirec](http://www.hawaii.gov/hirec) for more information and some frequently asked questions.

- What services does the REB provide to the condominium community?
- Where can I get help with association disputes?
- What laws apply to my condominium association?
- How do I get a copy of my association documents?
- How do I obtain a real estate license?
- What are the laws and rules for real estate licensees?

## Real Estate Branch

### About Us

The Real Estate Branch, as part of the Professional and Vocational Licensing Division, assists the Real Estate Commission in carrying out its responsibility for the education, licensure and discipline of real estate licensees; registration of condominium projects, condominium associations, condominium managing agents, and condominium hotel operators; and intervening in court cases involving the real estate recovery fund.

### Subscribe

Receive emails on relevant condominium educational materials. Sign up now at <http://cca.hawaii.gov/reb/subscribe/>

### Contact Us

Condominium Hotline: 1-844-808-DCCA (3222), Ext #1 then #8  
Hours: 9:00 AM – 3:00 PM  
Email: [hirec@dcca.hawaii.gov](mailto:hirec@dcca.hawaii.gov)  
Web: [www.hawaii.gov/hirec](http://www.hawaii.gov/hirec)

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### CONDOMINIUM: COMPLEXITIES OF MEDIATION

Real Estate Branch  
335 Merchant Street #333  
Honolulu, HI 96813

## CONDOMINIUM: COMPLEXITIES OF MEDIATION

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Consumer Affairs*

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## Complexities Of Mediation

Mediation can be complex. Condo owners often ask, what can be mediated, and what to do should problems arise?

## When Is Mediation Mandatory?

§514B-161, HRS, provides guidance on mediation. Mediation is mandatory 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) [see below];
- (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.

## What Else Can Be Mediated?

Unit owners also have the right to demand mediation or arbitration to resolve disputes regarding common expense assessments, but only if the owner pays all common expenses in full, pursuant to §514B-146(f), HRS.

Owners can also contest via mediation any penalty, fine, late fee, lien filing fee, or other charges, other than common expense assessments, prior to paying them, pursuant to §514B-146(g), HRS, within thirty days of receiving notice. Associations shall not collect until the association has participated in mediation, which must finish within sixty days of the owner's request.

A request for mediation pursuant to §514B-146.5(a), HRS, shall halt an association's nonjudicial foreclosure or power of sale proceeding, and associations shall agree to mediate.

## The Opposing Party Refuses To Mediate, What Can I Do?

§514B-161(d), HRS, provides a means to force mediation through the courts should a party refuse to mediate, either by a direct refusal or not responding.

A party to mediation can petition the circuit court for an order to compel mediation if mediation of the dispute is mandatory, a written request has been delivered and received by the party, and the parties have not agreed to a mediator and no mediation date has been set within forty-five days after receiving the request for mediation.

## What To Do When The Other Party Reneges On The Agreement

Mediation is non-binding and occasionally parties may choose not to uphold their part of the agreement. §514B-162.5, HRS, provides an option for voluntary binding arbitration. The program requires participants to have first undergone evaluative mediation. Voluntary arbitration is subsidized up to \$6,000 are for registered associations. Litigation, while expensive, is always an option.