

THE CONDOMINIUM
DISPUTE RESOLUTION
PILOT PROGRAM

**Report to the
Twenty-Fourth State Legislature**

Submitted by

**The Department of Commerce & Consumer Affairs
State of Hawai'i**

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I. INTRODUCTION

The **CDR Pilot Program Report to the Twenty-Fourth State Legislature** covers the period of January 1, 2006, through November 30, 2006, pursuant to the requirements of Act 164, Section 29, 2004 Session Laws of Hawai'i, as well as Act 277, 2006 Session Laws of Hawai'i.

II. UTILIZATION OF THE CDR PILOT PROGRAM

A. Cases filed with the CDR Pilot Program

From July 2004, to November 30, 2006, the CDR Pilot Program has received a total of thirteen (13) requests for hearing, of which, ten (10) were filed between January 2006, and November 30, 2006.

B. Disposition of Cases filed with the CDR Pilot Program

The disposition of the thirteen (13) requests for hearings filed:

- a. Two (2) cases were withdrawn and closed without prejudice;
- b. One (1) case is currently being stayed pursuant to pending litigation in Circuit Court;
- c. One (1) case is pending the completion of a settlement between the parties;
- d. One (1) case was with dismissed without prejudice by stipulation of the parties;
- e. Four (4) cases were dismissed after Motions to Dismiss or Motions for Summary Judgment were heard;
- f. One (1) case was dismissed after the hearing was completed; and
- g. Three (3) cases are currently pending hearings.¹

C. Summary of Issues Presented

The issues involved in these cases are:

¹ These cases are being held in abeyance, pending receipt of the 2006 revised statutes, to determine whether the Reviser of Statues has codified the provisions of Act 277 to Part VI of Hawai'i Revised Statutes Chapter 514B.

- a. Access to Board/Association records;
- b. Board procedures/scope of Board's authority;
- c. Use of common elements;
- d. Composition of Boards;
- e. Eligibility to serve on Boards; and
- f. Computation/distribution of maintenance fees.

III. THE CDR HEARINGS PROCESS

A. Formality of the CDR Pilot Program

Although the administrative hearings process utilized by the CDR Pilot Program is less formal than the procedures used in judicial proceedings, it should be noted that in all CDR cases, the Association of Apartment Owners Board of Directors and the condominium property management companies have been represented by legal counsel. Consequently, parties without legal counsel may have experienced some disparity in representation even though the procedures are typically relaxed to accommodate the parties who were not represented by counsel.

B. Costs of the CDR Pilot Program

The provisions of Hawai'i Revised Statutes §514A-121.5(h), and Act 277, 2006 Session Laws of Hawai'i, state that "Each party to the hearing shall bear the party's own costs, including attorney's fees, unless otherwise ordered by the hearing officer."

In cases where individual apartment owners are pursuing issues that are only of interest to the particular apartment owners, and where the Association of Apartment Owners, the Boards, and the property management companies are concomitantly incurring substantial attorneys fees, the costs of the CDR proceedings may become very significant.

IV. RECOMMENDATIONS

Act 92, 2005 Session Laws of Hawai'i, removed the jurisdictional limitations of the CDR Pilot Program as of July 1, 2005, and consequently, any dispute that can be submitted to mediation, may be filed with the CDR Pilot Program if the mediation is unsuccessful.

Even considering the ten (10) requests for hearings filed with the CDR Pilot Program since January 2006, it would appear that there is still not yet a significant demand for the kind of services provided by the CDR Pilot Program.