

The Condominium Management Dispute  
Resolution Process  
Pilot Program

Act 277, 2006 Session Laws of Hawai`i

**REPORT TO THE  
2008 LEGISLATURE**

Submitted by

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

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## **I. INTRODUCTION**

The ***Condominium Management Dispute Resolution Process Pilot Program Report to the 2008 Legislature*** covers the period of June 29, 2006, through November 30, 2007, pursuant to the requirements of Act 277, Section 2, 2006 Session Laws of Hawai'i.

## **II. LEGISLATIVE DEVELOPMENTS**

### **A. Legislative History**

Pursuant to Act 164, 2004 Session Laws of Hawai'i, ("Act 164"), the Office of Administrative Hearings ("OAH"), Department of Commerce and Consumer Affairs ("DCCA"), State of Hawai'i, was given the responsibility of conducting the Condominium Dispute Resolution Pilot Program ("CDR Pilot Program"), as of July 1, 2004. The CDR Pilot Program was codified as Hawai'i Revised Statutes ("HRS") §514A-121.5.

Subsequently, Act 92, 2005 Session Laws of Hawai'i, removed the jurisdictional limitations of the CDR Pilot Program as of July 1, 2005.

In 2006, Act 277, 2006 Session Laws of Hawai'i ("Act 277"), created a new pilot program for the condominium management dispute resolution process ("CMDRP Pilot Program") for condominiums governed by HRS Chapter 514B. Act 277 became effective on June 29, 2006, and will be repealed on June 30, 2009.<sup>1</sup> Although the initial version of Senate Bill No. 2545 (which subsequently became Act 277) was intended to extend the CDR Pilot Program created by Act 164, the pilot program created by the final version of Act 277, was limited in its jurisdiction. As noted in the House Committee on Consumer Protection & Commerce's House Standing Committee Report No. 1218-06 regarding S.B. No. 2545, S.D. 2:

Your Committee finds that the administrative hearing offered by this bill is available to persons who have participated unsuccessfully in dispute mediation. It therefore excludes more complex disputes involving matters such as actions to collect assessments and personal injury claims. *Your Committee also notes that the Dispute Resolution Program in this bill will be available*

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<sup>1</sup> Act 277, 2006 Session Laws of Hawai'i, did not extend Act 164, 2004 Session Laws of Hawai'i.

*only to condominium property regimes that are subject to Chapter 514B, HRS, either because they were created after its July 1, 2006, effective date, or because they have elected to be governed by the chapter.* (Emphasis added).

Accordingly, the CMDRP Pilot Program established by Act 277, only applies to: a) condominiums created after July 1, 2006; and b) condominiums created before July 1, 2006, if the condominiums appropriately amended their governing documents and elected to be governed by HRS Chapter 514B.

As a result of the sunset provisions of Part V, Section 35(3) of Act 164, the CDR Pilot Program was repealed on June 30, 2006. Upon becoming aware of the repeal of Act 164, DCCA immediately informed the Legislature so that legislative efforts could be undertaken to reinstate the CDR Pilot Program. However, from July 1, 2006, to July 2, 2007, the CDR Pilot Program was not able to formally accept any cases for filing under the repealed provisions of HRS §514A-121.5.<sup>2</sup>

In 2007, pursuant to Act 244 (effective July 2, 2007), the CDR Pilot Program regarding condominium disputes arising under HRS §514A-121.5, was re-enacted, and cases pending with the CDR Pilot Program prior to July 1, 2006, were reinstated.<sup>3</sup> On the other hand, the CDR Pilot Program was not retrospectively given jurisdiction over cases that had been provisionally filed with the CDR Pilot Program between July 1, 2006, and July 2, 2007.

Lastly, Act 242 (effective July 2, 2007) clarified the applicability of the CMDRP Pilot Program for condominiums that were created under HRS Chapter 514B, or that are otherwise subject to the provisions of Acts 242 and 277.

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<sup>2</sup> However, there were 14 cases that were provisionally accepted by the CDR Pilot Program and held in abeyance pending the Legislature's determination regarding the CDR Pilot Program. After the passage of Act 244 on July 2, 2007, these 14 cases were re-evaluated to determine if any issues fell within the CMDRP Pilot Program. Unfortunately, all 14 cases involved disputes that arose prior to July 1, 2006, and were therefore, not eligible for further proceedings before the CMDRP Pilot Program. Although these cases have either already been terminated without prejudice, or are in the process of being dismissed without prejudice, we anticipate that the majority of these cases will be refiled with the CDR Pilot Program pursuant to HRS §514A-121.5, as soon as the Petitioners have met the mediation requirements.

<sup>3</sup> Although Act 244 does not require the filing of an annual report regarding the CDR Pilot Program, from July 2, 2007, to November 23, 2007, there have been five (5) cases filed with the CDR Pilot Program pursuant to HRS §514A-121.5.

### **III. UTILIZATION OF THE CMDRP PILOT PROGRAM**

#### **A. Cases filed with the CMDRP Pilot Program**

From June 29, 2006, until November 23, 2007, there have been no cases filed with the CMDRP Pilot Program under the provisions of Act 277.

#### **B. Inquiries regarding the CMDRP Pilot Program**

From June 29, 2006, until November 23, 2007, there were three informational inquiries regarding the types of disputes that could be submitted to the CMDRP Pilot Program.

### **IV. RECOMMENDATIONS**

Because of the inherent limitations imposed by Act 277, the CMDRP Pilot Program will be of limited utilitarian value, at least until there are increases in: 1) the number of condominiums created under HRS Chapter 514B, and 2) the number of condominium disputes involving issues that arose after July 1, 2006.

DCCA will continue to monitor the utilization of the CMDRP Pilot Program before making any definitive recommendations to the Legislature regarding the long-term viability of the CMDRP Pilot Program.