

JAN 22 2007

A BILL FOR AN ACT

RELATING TO CONDOMINIUMS.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF HAWAII:

1 SECTION 1. Section 514B-104, Hawaii Revised Statutes, is
2 amended by amending subsection (a) to read as follows:

3 "(a) Except as provided in section 514B-105, and subject
4 to the provisions of the declaration and bylaws, the
5 association, even if unincorporated, may:

6 (1) Adopt and amend the declaration, bylaws, and rules and
7 regulations;

8 (2) Adopt and amend budgets for revenues, expenditures,
9 and reserves and collect assessments for common
10 expenses from unit owners, subject to section
11 514B-148;

12 (3) Hire and discharge managing agents and other
13 independent contractors, agents, and employees;

14 (4) Institute, defend, or intervene in litigation or
15 administrative proceedings in its own name on behalf
16 of itself or two or more unit owners on matters
17 affecting the condominium. For the purposes of



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actions under chapter 480, associations shall be deemed to be "consumers";

(5) Make contracts and incur liabilities; provided that a board acting on behalf of the association may renew contracts without first obtaining the consent or approval of a majority of unit owners;

(6) Regulate the use, maintenance, repair, replacement, and modification of common elements;

(7) Cause additional improvements to be made as a part of the common elements;

(8) Acquire, hold, encumber, and convey in its own name any right, title, or interest to real or personal property; provided that:

(A) Designation of additional areas to be common elements or subject to common expenses after the initial filing of the declaration or bylaws shall require the approval of at least sixty-seven per cent of the unit owners;

(B) If the developer discloses to the initial buyer in writing that additional areas will be designated as common elements whether pursuant to an incremental or phased project or otherwise,



1 the requirements of this paragraph shall not
2 apply as to those additional areas; and

3 (C) The requirements of this paragraph shall not
4 apply to the purchase of a unit for a resident
5 manager, which may be purchased with the approval
6 of the board;

7 (9) Subject to section 514B-38, grant easements, leases,
8 licenses, and concessions through or over the common
9 elements and permit encroachments on the common
10 elements;

11 (10) Impose and receive any payments, fees, or charges for
12 the use, rental, or operation of the common elements,
13 other than limited common elements described in
14 section 514B-35(2) and (4), and for services provided
15 to unit owners;

16 (11) Impose charges and penalties, including late fees and
17 interest, for late payment of assessments and levy
18 reasonable fines for violations of the declaration,
19 bylaws, rules, and regulations of the association,
20 either in accordance with the bylaws or, if the bylaws
21 are silent, pursuant to a resolution adopted by the
22 board that establishes a fining procedure that states



1 the basis for the fine and allows an appeal to the
2 board of the fine with notice and an opportunity to be
3 heard and providing that if the fine is paid, the unit
4 owner shall have the right to initiate a dispute
5 resolution process as provided by sections 514B-161,
6 514B-162, or by filing a request for an administrative
7 hearing under a pilot program administered by the
8 department of commerce and consumer affairs;

9 (12) Impose reasonable charges for the preparation and
10 recordation of amendments to the declaration,
11 documents requested for resale of units, or statements
12 of unpaid assessments;

13 (13) Provide for cumulative voting through a provision in
14 the bylaws;

15 (14) Provide for the indemnification of its officers,
16 board, committee members, and agents, and maintain
17 directors' and officers' liability insurance;

18 (15) Assign its right to future income, including the right
19 to receive common expense assessments, but only to the
20 extent section 514B-105(e) expressly so provides;

21 (16) Exercise any other powers conferred by the declaration
22 or bylaws;



- 1 (17) Exercise all other powers that may be exercised in
- 2 this State by legal entities of the same type as the
- 3 association, except to the extent inconsistent with
- 4 this chapter;
- 5 (18) Exercise any other powers necessary and proper for the
- 6 governance and operation of the association; and
- 7 (19) By regulation, subject to sections 514B-146, 514B-161,
- 8 and 514B-162, require that disputes between the board
- 9 and unit owners or between two or more unit owners
- 10 regarding the condominium be submitted to nonbinding
- 11 alternative dispute resolution in the manner described
- 12 in the regulation as a prerequisite to commencement of
- 13 a judicial proceeding."

14 SECTION 2. Section 514B-106, Hawaii Revised Statutes, is

15 amended to read as follows:

16 "**§514B-106 Board; powers and duties.** (a) Except as

17 provided in the declaration, the bylaws, subsection (b), or

18 other provisions of this chapter, the board may act in all

19 instances on behalf of the association. In the performance of

20 their duties, officers and members of the board shall owe the

21 association a fiduciary duty and exercise the degree of care and



1 loyalty required of an officer or director of a corporation
2 organized under chapter 414D.

3 (b) The board may not act on behalf of the association to
4 amend the declaration or bylaws (sections 514B-32(a)(11) and
5 514B-108(b)(7)), to remove the condominium from the provisions
6 of this chapter (section 514B-47), or to elect members of the
7 board or determine the qualifications, powers and duties, or
8 terms of office of board members (subsection (e)); provided that
9 nothing in this subsection shall be construed to prohibit board
10 members from voting proxies (section 514B-123) to elect members
11 of the board; and provided further that the board may fill
12 vacancies in its membership to serve until the next annual or
13 special association meeting.

14 (c) Within thirty days after the adoption of any proposed
15 budget for the condominium, the board shall make available a
16 copy of the budget to all the unit owners and shall notify each
17 unit owner that the unit owner may request a copy of the budget.

18 (d) The declaration may provide for a period of developer
19 control of the association, during which a developer, or persons
20 designated by the developer, may appoint and remove the officers
21 and members of the board. Regardless of the period provided in



1 the declaration, a period of developer control terminates no
2 later than the earlier of:

3 (1) Sixty days after conveyance of seventy-five per cent
4 of the common interest appurtenant to units that may
5 be created to unit owners other than a developer or
6 affiliate of the developer;

7 (2) Two years after the developer has ceased to offer
8 units for sale in the ordinary course of business;

9 (3) Two years after any right to add new units was last
10 exercised; or

11 (4) The day the developer, after giving written notice to
12 unit owners, records an instrument voluntarily
13 surrendering all rights to control activities of the
14 association.

15 A developer may voluntarily surrender the right to appoint and
16 remove officers and members of the board before termination of
17 that period, but in that event the developer may require, for
18 the duration of the period of developer control, that specified
19 actions of the association or board, as described in a recorded
20 instrument executed by the developer, be approved by the
21 developer before they become effective.



1 (e) Not later than the termination of any period of
2 developer control, the unit owners shall elect a board of at
3 least three members; provided that [~~projects~~]:

4 (1) Projects created after May 18, 1984, with one hundred
5 or more individual units, shall have an elected board
6 of at least nine members unless the membership has
7 amended the bylaws to reduce the number of directors;
8 and [~~provided further that projects~~]

9 (2) Projects with more than one hundred individual units
10 where at least seventy per cent of the unit owners do
11 not reside at the project may amend the bylaws to
12 reduce the board to as few as five members by the
13 written consent of a majority of owners or the vote of
14 a majority of a quorum at any annual meeting or
15 special meeting called for that purpose.

16 The association may rely on its membership records in
17 determining whether a unit is owner-occupied. A decrease in the
18 number of directors shall not deprive an incumbent director of
19 any remaining term of office.

20 (f) At any regular or special meeting of the association,
21 any member of the board may be removed and successors shall be
22 elected for the remainder of the term to fill the vacancies thus



1 created. The removal and replacement shall be by a vote of a
 2 majority of the unit owners and, otherwise, in accordance with
 3 all applicable requirements and procedures in the bylaws for the
 4 removal and replacement of directors and, if removal and
 5 replacement is to occur at a special meeting, section
 6 514B-121(b).

7 (g) The board may act on behalf of the association to make
 8 and renew contracts without first having to obtain the consent
 9 or approval of a majority of unit owners."

10 SECTION 3. New statutory material is underscored.

11 SECTION 4. This Act shall take effect upon its approval.

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INTRODUCED BY: Will Ego

Fred Humming
Robert...



Report Title:

Condominiums; Board Authority; Contracts

Description:

Authorizes board acting on behalf of a condominium association to renew contracts without first obtaining the consent or approval of a majority of unit owners.

