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## A BILL FOR AN ACT

RELATING TO CONDOMINIUMS.

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

1           SECTION 1. Section 514A-82, Hawaii Revised Statutes, is  
2 amended to read as follows:

3           "§514A-82 Contents of bylaws. (a) The bylaws shall provide  
4 for at least the following:

5           (1) Board of directors:

6                   (A) The election of a board of directors;

7                   (B) The number of persons constituting the board;

8                           provided that condominiums with more than one

9                           hundred individual apartment units shall have an

10                           elected board of not less than nine members

11                           unless not less than sixty-five per cent of all

12                           apartment owners vote by mail ballot, or at a

13                           special or annual meeting, to reduce the minimum

14                           number of directors;

15                   (C) That for the initial term of office, directors

16                           shall serve for a term of three years or the term

17                           as specified by the bylaws or until their

18                           successors have been elected or appointed;



- 1 (D) The powers and duties of the board;
- 2 (E) The compensation, if any, of the directors; [~~and~~]
- 3 (F) Whether or not the board may engage the services
- 4 of a manager or managing agent, or both, and
- 5 specifying which of the powers and duties granted
- 6 to the board by this chapter or otherwise may be
- 7 delegated by the board to either or both of them;
- 8 and
- 9 (G) That directors may serve no more than two
- 10 consecutive terms of office.
- 11 (2) Method of calling meetings of the apartment owners;
- 12 what percentage, if other than a majority of apartment
- 13 owners, constitutes a quorum; what percentage,
- 14 consistent with this chapter, is necessary to adopt
- 15 decisions binding on all apartment owners and that
- 16 votes allocated to any area that constitutes a common
- 17 element under section 514A-13(h) shall not be cast at
- 18 any association meeting, regardless of whether it is
- 19 so designated in the declaration;
- 20 (3) Election of a president from among the board of
- 21 directors who shall preside over the meetings of the



- 1 board of directors and of the association of apartment  
2 owners;
- 3 (4) Election of a secretary who shall keep the minute book  
4 wherein resolutions shall be recorded;
- 5 (5) Election of a treasurer who shall keep the financial  
6 records and books of account;
- 7 (6) Operation of the property, payment of the common  
8 expenses, and determination and collection of the  
9 common charges;
- 10 (7) Manner of collecting common expenses, expenses, costs,  
11 and fees recoverable by the association under section  
12 514A-94, and any penalties and late charges;
- 13 (8) Designation and removal of personnel necessary for the  
14 maintenance, repair, and replacement of the common  
15 elements;
- 16 (9) Method of adopting and amending administrative rules  
17 governing the details of the operation and use of the  
18 common elements;
- 19 (10) The restrictions on and requirements respecting the  
20 use and maintenance of the apartments and the use of  
21 the common elements, not set forth in the declaration,  
22 as are designed to prevent unreasonable interference



1 with the use of their respective apartments and of the  
2 common elements by the several apartment owners;

3 (11) The first meeting of the association of apartment  
4 owners shall be held not later than one hundred eighty  
5 days after recordation of the first apartment  
6 conveyance; provided forty per cent or more of the  
7 project has been sold and recorded. If forty per cent  
8 of the project is not sold and recorded at the end of  
9 one year, an annual meeting shall be called; provided  
10 ten per cent of the apartment owners so request;

11 (12) All members of the board of directors shall be owners,  
12 co-owners, vendees under an agreement of sale, or an  
13 officer of any corporate owner of an apartment. The  
14 partners in a general partnership and the general  
15 partners of a limited partnership shall be deemed to  
16 be the owners of an apartment for this purpose. There  
17 shall not be more than one representative on the board  
18 of directors from any one apartment;

19 (13) A director shall not cast any proxy vote at any board  
20 meeting, nor shall a director vote at any board  
21 meeting on any issue in which the director has a  
22 conflict of interest;



- 1       (14) No resident manager of a condominium shall serve on
- 2             its board of directors;
- 3       (15) The board of directors shall meet at least once a
- 4             year;
- 5       (16) All association and board of directors meetings shall
- 6             be conducted in accordance with the most current
- 7             edition of Robert's Rules of Order;
- 8       (17) All meetings of the association of apartment owners
- 9             shall be held at the address of the condominium
- 10            project or elsewhere within the State as determined by
- 11            the board of directors; and
- 12       (18) Penalties chargeable against persons for violation of
- 13            the covenants, conditions, or restrictions set forth
- 14            in the declaration, or of the bylaws and
- 15            administrative rules adopted pursuant thereto, method
- 16            of determination of violations, and manner of
- 17            enforcing penalties, if any.
- 18       (b) In addition to the requirements of subsection (a), the
- 19       bylaws shall be consistent with the following provisions:
- 20       (1) At any regular or special meeting of the apartment
- 21            owners, any one or more members of the board of
- 22            directors may be removed by the apartment owners and



1 successors shall then and there be elected for the  
2 remainder of the term to fill the vacancies thus  
3 created. The removal and replacement shall be by a  
4 vote of a majority of the apartment owners and,  
5 otherwise, in accordance with all applicable  
6 requirements and procedures in the bylaws for the  
7 removal and replacement of directors. If removal and  
8 replacement is to occur at a special association  
9 meeting, the call for the meeting shall be by the  
10 president or by a petition to the secretary or  
11 managing agent signed by not less than twenty-five per  
12 cent of the apartment owners as shown in the  
13 association's record of ownership; provided that if  
14 the secretary or managing agent shall fail to send out  
15 the notices for the special meeting within fourteen  
16 days of receipt of the petition, then the petitioners  
17 shall have the authority to set the time, date, and  
18 place for the special meeting and to send out the  
19 notices for the special meeting in accordance with the  
20 requirements of the bylaws. Except as otherwise  
21 provided in this section, the meeting for the removal  
22 and replacement from office of directors shall be



1 scheduled, noticed, and conducted in accordance with  
2 the bylaws of the association;

3 (2) The bylaws may be amended at any time by the vote or  
4 written consent of sixty-five per cent of all  
5 apartment owners; provided that:

6 (A) Each one of the particulars set forth in this  
7 subsection shall be embodied in the bylaws  
8 always; and

9 (B) Any proposed bylaws with the rationale for the  
10 proposal may be submitted by the board of  
11 directors or by a volunteer apartment owners'  
12 committee. If submitted by that committee, the  
13 proposal shall be accompanied by a petition  
14 signed by not less than twenty-five per cent of  
15 the apartment owners as shown in the  
16 association's record of ownership. The proposed  
17 bylaws, rationale, and ballots for voting on any  
18 proposed bylaw shall be mailed by the board of  
19 directors to the owners at the expense of the  
20 association for vote or written consent without  
21 change within thirty days of the receipt of the  
22 petition by the board of directors. The vote or



1           written consent required to adopt the proposed  
2           bylaw shall not be less than sixty-five per cent  
3           of all apartment owners; provided that the vote  
4           or written consent must be obtained within three  
5           hundred sixty-five days after mailing for a  
6           proposed bylaw submitted by either the board of  
7           directors or a volunteer apartment owners'  
8           committee. If the bylaw is duly adopted, then  
9           the board shall cause the bylaw amendment to be  
10          recorded in the bureau of conveyances or filed in  
11          the land court, as the case may be. The  
12          volunteer apartment owners' committee shall be  
13          precluded from submitting a petition for a  
14          proposed bylaw that is substantially similar to  
15          that which has been previously mailed to the  
16          owners within one year after the original  
17          petition was submitted to the board.

18          This paragraph shall not preclude any apartment owner  
19          or voluntary apartment owners' committee from  
20          proposing any bylaw amendment at any annual  
21          association meeting;



- 1           (3) Notices of association meetings, whether annual or  
2           special, shall be sent to each member of the  
3           association of apartment owners at least fourteen days  
4           prior to the meeting and shall contain at least:  
5           (A) The date, time, and place of the meeting;  
6           (B) The items on the agenda for the meeting; and  
7           (C) A standard proxy form authorized by the  
8           association, if any;
- 9           (4) No resident manager or managing agent shall solicit,  
10          for use by the manager or managing agent, any proxies  
11          from any apartment owner of the association of owners  
12          that employs the resident manager or managing agent,  
13          nor shall the resident manager or managing agent cast  
14          any proxy vote at any association meeting except for  
15          the purpose of establishing a quorum. Any board of  
16          directors that intends to use association funds to  
17          distribute proxies, including the standard proxy form  
18          referred to in paragraph (3), shall first post notice  
19          of its intent to distribute proxies in prominent  
20          locations within the project at least thirty days  
21          prior to its distribution of proxies; provided that if  
22          the board receives within seven days of the posted



1 notice a request by any owner for use of association  
2 funds to solicit proxies accompanied by a statement,  
3 the board shall mail to all owners either:

4 (A) A proxy form containing the names of all owners  
5 who have requested the use of association funds  
6 for soliciting proxies accompanied by their  
7 statements; or

8 (B) A proxy form containing no names, but accompanied  
9 by a list of names of all owners who have  
10 requested the use of association funds for  
11 soliciting proxies and their statements.

12 The statement shall not exceed one hundred words,  
13 indicating the owner's qualifications to serve on the  
14 board and reasons for wanting to receive proxies;  
15 provided that proxies for the election of directors  
16 shall be mailed to each apartment owner by certified  
17 mail and shall include a postage-paid self-addressed  
18 envelope; provided further that proxies shall be used  
19 only for determining quorum, and shall not be used for  
20 allocating votes to any candidate.

21 (5) A director who has a conflict of interest on any issue  
22 before the board shall disclose the nature of the



1 conflict of interest prior to a vote on that issue at  
2 the board meeting, and the minutes of the meeting  
3 shall record the fact that a disclosure was made;

4 (6) The apartment owners shall have the irrevocable right,  
5 to be exercised by the board of directors, to have  
6 access to each apartment from time to time during  
7 reasonable hours as may be necessary for the operation  
8 of the property or for making emergency repairs  
9 therein necessary to prevent damage to the common  
10 elements or to another apartment or apartments;

11 (7) An owner shall not act as an officer of an association  
12 and an employee of the managing agent employed by the  
13 association;

14 (8) An association's employees shall not engage in selling  
15 or renting apartments in the condominium in which they  
16 are employed except association-owned units, unless  
17 such activity is approved by an affirmative vote of  
18 sixty-five per cent of the membership;

19 (9) The board of directors shall meet at least once a  
20 year. Whenever practicable, notice of all board  
21 meetings shall be posted by the resident manager or a  
22 member of the board in prominent locations within the



1 project seventy-two hours prior to the meeting or  
2 simultaneously with notice to the board of directors;  
3 (10) Directors shall not expend association funds for their  
4 travel, directors' fees, and per diem, unless owners  
5 are informed and a majority approve of these expenses;  
6 (11) Associations at their own expense shall provide all  
7 board members with a current copy of the association's  
8 declaration, bylaws, house rules, and, annually, a  
9 copy of this chapter with amendments;  
10 (12) The directors may expend association funds, which  
11 shall not be deemed to be compensation to the  
12 directors, to educate and train themselves in subject  
13 areas directly related to their duties and  
14 responsibilities as directors; provided that the  
15 approved annual operating budget shall include these  
16 expenses as separate line items. These expenses may  
17 include registration fees, books, videos, tapes, other  
18 educational materials, and economy travel expenses.  
19 Except for economy travel expenses within the State,  
20 all other travel expenses incurred under this  
21 subsection shall be subject to the requirements of  
22 paragraph (10);



1           (13) A lien created pursuant to section 514A-90 may be  
2           enforced by the association in any manner permitted by  
3           law, including nonjudicial or power of sale  
4           foreclosure procedures authorized by chapter 667; and

5           (14) If the bylaws provide for cumulative voting by the  
6           owners, the owners may so vote if an owner gives  
7           notice of the owner's intent to cumulatively vote  
8           before voting commences.

9 The provisions of this subsection shall be deemed incorporated  
10 into the bylaws of all condominium projects existing as of  
11 January 1, 1988, and all condominium projects created after that  
12 date."

13           SECTION 2. Section 514B-107, Hawaii Revised Statutes, is  
14 amended to read as follows:

15           "§514B-107 Board; limitations. (a) Members of the board  
16 shall be unit owners or co-owners, vendees under an agreement of  
17 sale, a trustee of a trust which owns a unit, or an officer,  
18 partner, member, or other person authorized to act on behalf of  
19 any other legal entity which owns a unit. There shall not be  
20 more than one representative on the board from any one unit.

21           (b) No resident manager or employee of a condominium shall  
22 serve on its board.



1           (c) An owner shall not act as an officer of an association  
2 and an employee of the managing agent retained by the  
3 association. Any owner who is a board member of an association  
4 and an employee of the managing agent retained by the  
5 association shall not participate in any discussion regarding a  
6 management contract at a board meeting and shall be excluded  
7 from any executive session of the board where the management  
8 contract or the property manager will be discussed.

9           (d) Directors shall not expend association funds for their  
10 travel, directors' fees, and per diem, unless owners are  
11 informed and a majority approve of these expenses; provided  
12 that, with the approval of the board, directors may be  
13 reimbursed for actual expenditures incurred on behalf of the  
14 association. The minutes shall reflect in detail the items and  
15 amounts of the reimbursements.

16           (e) Associations at their own expense shall provide all  
17 board members with a current copy of the association's  
18 declaration, bylaws, house rules, and, annually, a copy of this  
19 chapter with amendments.

20           (f) The directors may expend association funds, which  
21 shall not be deemed to be compensation to the directors, to  
22 educate and train themselves in subject areas directly related



1 to their duties and responsibilities as directors; provided that  
2 the approved annual operating budget shall include these  
3 expenses as separate line items. These expenses may include  
4 registration fees, books, videos, tapes, other educational  
5 materials, and economy travel expenses. Except for economy  
6 travel expenses within the State, all other travel expenses  
7 incurred under this subsection shall be subject to the  
8 requirements of subsection (d).

9 (g) No director shall serve more than two consecutive  
10 terms of office."

11 SECTION 3. Section 514B-123, Hawaii Revised Statutes, is  
12 amended by amending subsection (h) to read as follows:

13 "(h) With respect to the use of association funds to  
14 distribute proxies:

15 (1) Any board that intends to use association funds to  
16 distribute proxies, including the standard proxy form  
17 referred to in subsection (d)(3), shall first post  
18 notice of its intent to distribute proxies in  
19 prominent locations within the project at least  
20 twenty-one days before its distribution of proxies.

21 If the board receives within seven days of the posted  
22 notice a request by any owner for use of association



1 funds to solicit proxies accompanied by a statement,  
2 the board shall mail to all owners either:

3 (A) A proxy form containing the names of all owners  
4 who have requested the use of association funds  
5 for soliciting proxies accompanied by their  
6 statements; or

7 (B) A proxy form containing no names, but accompanied  
8 by a list of names of all owners who have  
9 requested the use of association funds for  
10 soliciting proxies and their statements[-];  
11 provided that:

12 (i) Proxy forms distributed pursuant to  
13 subparagraph (A) or (B) for the election of  
14 directors shall be sent by certified mail  
15 and shall include a postage-paid self-  
16 addressed envelope; and

17 (ii) Proxies shall be used only for determining  
18 quorum, and shall not be used for allocating  
19 votes to any candidate.

20 The statement, which shall be limited to black text on  
21 white paper, shall not exceed [one hundred words,] one  
22 single-sided 8-1/2" x 11" page, indicating the owner's





1            qualifications to serve on the board and reasons for  
2            wanting to receive proxies. In addition, a  
3            questionnaire approved by the board may accompany the  
4            notice of intent to distribute proxies. The  
5            questionnaire shall not exceed one single-sided  
6            8-1/2" x 11" page and shall be distributed to all  
7            board nominees, who shall have at least seven days to  
8            complete the questionnaire at their discretion.  
9            Responses may be written on the questionnaire or on  
10           one side of a separate 8-1/2" x 11" page. The board  
11           of directors shall include a nominee's responses to  
12           the questionnaire with the documents mailed to all  
13           owners under paragraphs (1) and (2), and may print the  
14           responses either on the back of the nominee's  
15           statement or separately; and

- 16           (2) A board or member of the board may use association  
17           funds to solicit proxies as part of the distribution  
18           of proxies. If a member of the board, as an  
19           individual, seeks to solicit proxies using association  
20           funds, the board member shall proceed as a unit owner  
21           under paragraph (1)."



1 SECTION 4. Statutory material to be repealed is bracketed  
2 and stricken. New statutory material is underscored.

3 SECTION 5. This Act shall take effect upon its approval.  
4

INTRODUCED BY: Rider Cobarillo

[Signature]

[Signature]

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[Signature]

[Signature]

[Signature]

JAN 25 2010



**Report Title:**  
Condominiums

**Description:**

Limits condominium directors to a maximum of 2 consecutive terms of office. Requires proxies distributed to members in relation to an election of directors to be sent by certified mail and include a postage-paid self-addressed envelope.

*The summary description of legislation appearing on this page is for informational purposes only and is not legislation or evidence of legislative intent.*

