
A BILL FOR AN ACT

RELATING TO HOUSING.

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

1 SECTION 1. Section 514A-13, Hawaii Revised Statutes, is
2 amended by amending subsection (d) to read as follows:

3 "(d) Each apartment owner may use the common elements in
4 accordance with the purpose for which they were intended without
5 hindering or encroaching upon the lawful rights of the other
6 apartment owners, subject to:

7 (1) The right of the board of directors, upon the approval
8 of the owners of seventy-five per cent of the common
9 interests, except as provided in section 514A-13.4, to
10 change the use of the common elements;

11 (2) The right of the board of directors, on behalf of the
12 association of apartment owners, to lease or otherwise
13 use for the benefit of the association of apartment
14 owners those common elements [~~which~~] that are not
15 actually used by any of the apartment owners for an
16 originally intended special purpose, as determined by
17 the board of directors; provided that, except for any
18 leases, licenses, or other agreements entered into for



1 the purposes authorized by section 514A-13.4, unless
2 the approval of the owners of seventy-five per cent of
3 the common interest is obtained, any such lease [~~shall~~
4 ~~not~~] or agreement for use:

5 (A) Shall not set rent at an amount below fair market
6 rent value to individuals or entities who are not
7 apartment owners;

8 (B) Shall not have a term exceeding five years [and
9 shall contain]; without the approval of seventy-
10 five per cent of the apartment owners; and

11 (C) Shall contain a provision that the lease or
12 agreement for use may be terminated upon the end
13 of its initial term by either party thereto on
14 not more than sixty days written notice;

15 (3) The right of the board of directors to lease or
16 otherwise use for the benefit of the association of
17 apartment owners those common elements not falling
18 within paragraph (2), upon obtaining:

19 (A) Except as provided in section 514A-13.4, the
20 approval of the owners of seventy-five per cent
21 of the common elements, including all directly
22 affected owners and all owners of apartments to



1 which [~~such~~] those common elements are
2 appurtenant in the case of limited common
3 elements; and
4 (B) The approval of all mortgagees of record on
5 apartments with respect to which owner approval
6 is required by subparagraph (A), if [~~such~~] the
7 lease or use would be in derogation of the
8 interest of [~~such~~] those mortgagees; and
9 (4) The exclusive use of the limited common elements as
10 provided in the declaration."

11 SECTION 2. Section 514A-15, Hawaii Revised Statutes, is
12 amended to read as follows:

13 "**§514A-15 Common profits and expenses.** (a) The common
14 profits of the property shall be distributed among, and the
15 common expenses shall be charged to, the apartment owners,
16 including the developer, in proportion to the common interest
17 appurtenant to their respective apartments; provided that [~~in~~]:

18 (1) In a mixed-use project containing apartments for both
19 residential and commercial use, [~~such~~] those charges
20 and distributions may be apportioned in a fair and
21 equitable manner as set forth in the declaration;
22 [~~provided further that all~~] and



1 (2) All limited common elements costs and expenses,
2 including but not limited to, maintenance, repair,
3 replacement, additions, and improvements shall be
4 charged to the owner of the apartment to which the
5 limited common element is appurtenant in an equitable
6 manner as set forth in the declaration.

7 (b) An apartment owner, including the developer, shall
8 become obligated for the payment of the share of the common
9 expenses allocated to [~~his~~] the apartment owner's apartment at
10 the time the certificate of occupancy relating to [~~his~~] the
11 apartment owner's apartment is issued by the appropriate county
12 agency; provided that a developer may assume all the actual
13 common expenses in a residential project containing no mixed
14 commercial and residential use, by stating in the abstract as
15 required by section 514A-61 that the apartment owner shall not
16 be obligated for the payment of [~~his~~] the apartment owner's
17 respective share of the common expenses until [~~such time~~] the
18 developer files an amended abstract with the commission [~~which~~]
19 that shall provide, that after a date certain, the respective
20 apartment owner shall thereafter be obligated to pay for [~~his~~]
21 the apartment owner's respective share of common expenses that
22 is allocated to [~~his~~] the apartment owner's apartment. The



1 amended abstract shall be filed at least thirty days in advance
2 with the commission with a copy of the abstract being delivered
3 either by mail or personal delivery after the filing to each of
4 the apartment owners whose maintenance expenses were assumed by
5 the developer.

6 (c) In a condominium project that includes residential
7 units and condominium hotel units, all direct costs attributable
8 to the condominium hotel operations shall be charged only to the
9 unit owners with units included in the condominium hotel
10 operations unless seventy-five per cent of the association's
11 unit owners have approved the direct cost as an association
12 common expense."

13 SECTION 3. Section 514B-38, Hawaii Revised Statutes, is
14 amended to read as follows:

15 "**§514B-38 Common elements.** Each unit owner may use the
16 common elements in accordance with the purposes permitted under
17 the declaration, subject to:

18 (1) The rights of other unit owners to use the common
19 elements;

20 (2) Any owner's exclusive right to use of the limited
21 common elements as provided in the declaration;



- 1 (3) The right of the owners to amend the declaration to
- 2 change the permitted uses of the common elements;
- 3 provided that subject to [†]section[†] 514B-140(c):
- 4 (A) Changing common element open spaces or landscaped
- 5 spaces to other uses shall not require an
- 6 amendment to the declaration; and
- 7 (B) Minor additions to or alterations of the common
- 8 elements for the benefit of individual units are
- 9 permitted if the additions or alterations can be
- 10 accomplished without substantial impact on the
- 11 interests of other owners in the common elements,
- 12 as reasonably determined by the board;
- 13 (4) Any rights reserved in the declaration to amend the
- 14 declaration to change the permitted uses of the common
- 15 elements;
- 16 (5) The right of the board, on behalf of the association,
- 17 to lease or otherwise use for the benefit of the
- 18 association those common elements that the board
- 19 determines are not actually used by any of the unit
- 20 owners for a purpose permitted in the declaration.
- 21 Unless the lease is approved by the owners of at least



1 sixty-seven per cent of the common interest, the lease
2 ~~shall~~:

3 (A) Shall not set rent at an amount below fair market
4 rent value to individuals or entities who are not
5 unit owners;

6 (B) Shall not have a term of ~~no~~ more than five
7 years; without the approval of seventy-five per
8 cent of the unit owners; and ~~may~~

9 (C) May be terminated upon the end of its initial
10 term by the board or the lessee on no more than
11 sixty days prior written notice;

12 provided that the requirements of this paragraph shall
13 not apply to any leases, licenses, or other agreements
14 entered into for the purposes authorized by section
15 514B-140(d); and

16 (6) The right of the board, on behalf of the association,
17 to lease or otherwise use for the benefit of the
18 association those common elements that the board
19 determines are actually used by one or more unit
20 owners for a purpose permitted in the declaration.
21 The lease or use shall be approved by the owners of at
22 least sixty-seven per cent of the common interest,



1 including all directly affected unit owners that the
2 board reasonably determines actually use the common
3 elements, and the owners' mortgagees; provided that
4 the requirements of this paragraph shall not apply to
5 any leases, licenses, or other agreements entered into
6 for the purposes authorized by section 514B-140(d)."

7 SECTION 4. Section 514B-41, Hawaii Revised Statutes, is
8 amended to read as follows:

9 " ~~[+]~~**§514B-41**~~[+]~~ **Common profits and expenses.** (a) The
10 common profits of the property shall be distributed among, and
11 the common expenses shall be charged to, the unit owners,
12 including the developer, in proportion to the common interest
13 appurtenant to their respective units, except as otherwise
14 provided in the declaration or bylaws. In a mixed-use project
15 containing units for both residential and nonresidential use,
16 the charges and distributions may be apportioned in a fair and
17 equitable manner as set forth in the declaration. Except as
18 otherwise provided in subsection (c) or the declaration or
19 bylaws, all limited common element costs and expenses, including
20 but not limited to maintenance, repair, replacement, additions,
21 and improvements, shall be charged to the owner or owners of the



1 unit or units to which the limited common element is appurtenant
2 in an equitable manner as set forth in the declaration.

3 (b) A unit owner, including the developer, shall become
4 obligated for the payment of the share of the common expenses
5 allocated to the owner's unit at the time the certificate of
6 occupancy relating to the owner's unit is issued by the
7 appropriate county agency; provided that a developer may assume
8 all the actual common expenses in a project by stating in the
9 developer's public report required by section 514B-54 that the
10 unit owner shall not be obligated for the payment of the owner's
11 share of the common expenses until [~~such time as~~] the developer
12 sends the owners written notice that, after a specified date,
13 the unit owners shall be obligated to pay for the portion of
14 common expenses that is allocated to their respective units.
15 The developer shall mail the written notice to the owners, the
16 association, and the managing agent, if any, at least thirty
17 days before the specified date.

18 (c) Unless otherwise provided in the declaration or
19 bylaws, if the board reasonably determines that the extra cost
20 incurred to separately account for and charge for the costs of
21 maintenance, repair, or replacement of limited common elements
22 is not justified, the board may adopt a resolution determining



1 that certain limited common element expenses will be assessed in
2 accordance with the undivided common interest appurtenant to
3 each unit. In reaching its determination, the board shall
4 consider:

- 5 (1) The amount at issue;
- 6 (2) The difficulty of segregating the costs;
- 7 (3) The number of units to which similar limited common
8 elements are appurtenant;
- 9 (4) The apparent difference between separate assessment
10 and assessment based on the undivided common interest;
11 and
- 12 (5) Any other relevant factors, as determined by the
13 board.

14 The resolution shall be final and binding in the absence of a
15 determination that the board abused its discretion.

16 (d) Unless made pursuant to rights reserved in the
17 declaration and disclosed in the developer's public report, if
18 an association amends its declaration or bylaws to change the
19 use of the condominium property regime from residential to
20 nonresidential, all direct and indirect costs attributable to
21 the newly permitted nonresidential use shall be charged only to
22 the unit owners using or directly benefiting from the new



1 nonresidential use, in a fair and equitable manner as set forth
2 in the amendment to the declaration or bylaws.

3 (e) In a condominium project that includes residential
4 units and condominium hotel units, all direct costs attributable
5 to the condominium hotel operations shall be charged only to the
6 unit owners whose units are included in the condominium hotel
7 operations unless seventy-five per cent of the association's
8 unit owners have approved the direct cost as an association
9 common expense."

10 SECTION 5. Statutory material to be repealed is bracketed
11 and stricken. New statutory material is underscored.

12 SECTION 6. This Act shall take effect on July 1, 2012.



Report Title:

Condominiums; Condominium Hotels; Common Elements

Description:

Prohibits a condominium board of directors, when leasing common elements of the condominium, from setting the rent at an amount below fair market rent value to individuals or entities who are not apartment owners. Requires all direct costs attributable to condominium hotel operations to be charged only to unit owners whose units are included in condominium hotel operations.

Effective July 1, 2012. (HB2069 HD2)

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

