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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-83.2, Hawaii Revised Statutes, is  
2 amended to read as follows:

3           "~~§514A-83.2~~ **Proxies.** (a) A proxy, to be valid, shall:

4           (1) Be delivered to the secretary of the association of  
5 apartment owners or the managing agent, if any, no  
6 later than 4:30 p.m. on the second business day prior  
7 to the date of the meeting to which it pertains;

8           (2) Contain at least the name of the association of  
9 apartment owners, the date of the meeting of the  
10 association of apartment owners, the printed names and  
11 signatures of the persons giving the proxy, the  
12 apartments for which the proxy is given, and the date  
13 that the proxy is given; and

14           (3) Contain boxes wherein the owner has indicated that the  
15 proxy is given:

16           (A) For quorum purposes only;

17           (B) To the individual whose name is printed on a line  
18 next to this box;



1 (C) To the board of directors as a whole and that the  
2 vote be made on the basis of the preference of  
3 the majority of the board; or

4 (D) To those directors present at the meeting and the  
5 vote to be shared with each board member  
6 receiving an equal percentage.

7 (b) A proxy shall only be valid for the meeting to which the  
8 proxy pertains and its adjournments, may designate any person as  
9 proxy, and may be limited as the apartment owner desires and  
10 indicates; provided that no proxy shall be irrevocable unless  
11 coupled with a financial interest in the unit.

12 (c) No board of directors or member of the board shall use  
13 association funds to solicit proxies except for the distribution  
14 of proxies as set forth in section 514A-82(b)(4); provided that  
15 this shall not prevent an individual member of the board from  
16 soliciting proxies as an apartment owner under section  
17 ~~514A-82(b)(4)~~.

18 (d) A copy, facsimile telecommunication, or other reliable  
19 reproduction of a proxy may be used in lieu of the original proxy  
20 for any and all purposes for which the original proxy could be  
21 used; provided that any copy, facsimile telecommunication, or



1 other reproduction shall be a complete reproduction of the entire  
2 original proxy.

3 (e) Nothing in this section shall affect the holder of any  
4 proxy under a first mortgage of record encumbering an apartment or  
5 under an agreement of sale affecting an apartment.

6 (f) Notwithstanding any provision to the contrary, if,  
7 following a vote by the association, an error is discovered in  
8 any proxy given in relation to that vote, the board, within  
9 forty-five days of the discovery of the error, shall:

10 (1) Institute an adequate remedy; or

11 (2) Hold another vote to decide the issue on the original  
12 ballot.

13 If no remedy or subsequent vote on the issue is instituted  
14 within forty-five days of the discovery of the error, the  
15 results of the vote shall be invalid.

16 (g) If an error in any proxy is discovered more than one  
17 hundred twenty days after the date of a vote, the results of  
18 that vote shall stand."

19 SECTION 2. Section 514B-123, Hawaii Revised Statutes, is  
20 amended to read as follows:

21 "§514B-123 Association meetings; voting; proxies. (a) If  
22 only one of several owners of a unit is present at a meeting of



1 the association, that owner is entitled to cast all the votes  
2 allocated to that unit. If more than one of the owners is  
3 present, the votes allocated to that unit may be cast only in  
4 accordance with the agreement of a majority in interest of the  
5 owners, unless the declaration or bylaws expressly provide  
6 otherwise. There is majority agreement if any one of the owners  
7 casts the votes allocated to that unit without protest being  
8 made by any of the other owners of the unit to the person  
9 presiding over the meeting before the polls are closed.

10 (b) Votes allocated to a unit may be cast pursuant to a  
11 proxy duly executed by a unit owner. A unit owner may vote by  
12 mail or electronic transmission through a duly executed proxy.  
13 If a unit is owned by more than one person, each owner of the  
14 unit may vote or register protest to the casting of votes by the  
15 other owners of the unit through a duly executed proxy. In the  
16 absence of protest, any owner may cast the votes allocated to  
17 the unit by proxy. A unit owner may revoke a proxy given  
18 pursuant to this section only by actual notice of revocation to  
19 the secretary of the association or the managing agent. A proxy  
20 is void if it purports to be revocable without notice.

21 (c) No votes allocated to a unit owned by the association  
22 may be cast for the election or reelection of directors.



- 1 (d) A proxy, to be valid, shall:
- 2 (1) Be delivered to the secretary of the association or
- 3 the managing agent, if any, no later than 4:30 p.m. on
- 4 the second business day prior to the date of the
- 5 meeting to which it pertains;
- 6 (2) Contain at least the name of the association, the date
- 7 of the meeting of the association, the printed names
- 8 and signatures of the persons giving the proxy, the
- 9 unit numbers for which the proxy is given, the names
- 10 of persons to whom the proxy is given, and the date
- 11 that the proxy is given; and
- 12 (3) If it is a standard proxy form authorized by the
- 13 association, contain boxes wherein the owner has
- 14 indicated that the proxy is given:
- 15 (A) For quorum purposes only;
- 16 (B) To the individual whose name is printed on a line
- 17 next to this box;
- 18 (C) To the board as a whole and that the vote is to
- 19 be made on the basis of the preference of the
- 20 majority of the directors present at the meeting;
- 21 or



1           (D) To those directors present at the meeting with  
2                   the vote to be shared with each director  
3                   receiving an equal percentage.

4           The proxy form shall also contain a box wherein the  
5           owner may indicate that the owner wishes to obtain a  
6           copy of the annual audit report required by section  
7           514B-150.

8           (e) A proxy shall only be valid for the meeting to which  
9           the proxy pertains and its adjournments, may designate any  
10           person as proxy, and may be limited as the unit owner desires  
11           and indicates; provided that no proxy shall be irrevocable  
12           unless coupled with a financial interest in the unit.

13           (f) A copy, facsimile telecommunication, or other reliable  
14           reproduction of a proxy may be used in lieu of the original  
15           proxy for any and all purposes for which the original proxy  
16           could be used; provided that any copy, facsimile  
17           telecommunication, or other reproduction shall be a complete  
18           reproduction of the entire original proxy.

19           (g) Nothing in this section shall affect the holder of any  
20           proxy under a first mortgage of record encumbering a unit or  
21           under an agreement of sale affecting a unit.



1           (h) With respect to the use of association funds to  
2 distribute proxies:

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

9           If the board receives within seven days of the posted  
10 notice a request by any owner for use of association  
11 funds to solicit proxies accompanied by a statement,  
12 the board shall mail to all owners either:

13           (A) A proxy form containing the names of all owners  
14 who have requested the use of association funds  
15 for soliciting proxies accompanied by their  
16 statements; or

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

21           The statement, which shall be limited to black text on  
22 white paper, shall not exceed one single-sided



1 8-1/2" x 11" page, indicating the owner's  
2 qualifications to serve on the board or reasons for  
3 wanting to receive proxies; and

4 (2) A board or member of the board may use association  
5 funds to solicit proxies as part of the distribution  
6 of proxies. If a member of the board, as an  
7 individual, seeks to solicit proxies using association  
8 funds, the board member shall proceed as a unit owner  
9 under paragraph (1).

10 (i) No managing agent or resident manager, or their  
11 employees, shall solicit, for use by the managing agent or  
12 resident manager, any proxies from any unit owner of the  
13 association that retains the managing agent or employs the  
14 resident manager, nor shall the managing agent or resident  
15 manager cast any proxy vote at any association meeting except  
16 for the purpose of establishing a quorum.

17 (j) No board shall adopt any rule prohibiting the  
18 solicitation of proxies or distribution of materials relating to  
19 association matters on the common elements by unit owners;  
20 provided that a board may adopt rules regulating reasonable  
21 time, place, and manner of the solicitations or distributions,  
22 or both.





1        (k) Notwithstanding any provision to the contrary, if,  
2 following a vote by the association, an error is discovered in  
3 any proxy given in relation to that vote, the board, within  
4 forty-five days of the discovery of the error, shall:

- 5            (1) Institute an adequate remedy; or  
6            (2) Hold another vote to decide the issue on the original  
7            ballot.

8            If no remedy or subsequent vote on the issue is instituted  
9 within forty-five days of the discovery of the error, the  
10 results of the vote shall be invalid.

11           (l) If an error in any proxy is discovered more than one  
12 hundred twenty days after the date of a vote, the results of  
13 that vote shall stand."

14           SECTION 3. This Act does not affect rights and duties that  
15 matured, penalties that were incurred, and proceedings that were  
16 begun before its effective date.

17           SECTION 4. Statutory material to be repealed is bracketed  
18 and stricken. New statutory material is underscored.



1 SECTION 5. This Act shall take effect upon its approval.

2

INTRODUCED BY:

Shum v de  
2013 -  
Op Cult  
by 2 person  
Maif B. Lee

JAN 20 2012



# H.B. NO. 2159

**Report Title:**

Condominiums; Proxy; Errors

**Description:**

Provides for remedies in the event of the discovery of an error in any proxy.

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

