
A BILL FOR AN ACT

RELATING TO CONDOMINIUMS.

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

1 SECTION 1. The legislature finds there is a need for
2 viable, available, and affordable assisted living facilities for
3 the State's aging population. The legislature further finds
4 that where an assisted living facility operates in a condominium
5 and the health care services or services relating to personal
6 care that are offered by the assisted living facility are not
7 utilized by all of the unit owners or residents in the
8 condominium, it is unfair to require all unit owners to pay a
9 pro-rata share of expenses for those services by including the
10 cost of such services in the condominium's maintenance fee,
11 which is payable by and allocated among all of the unit owners.

12 The legislature also finds that the operation and expenses
13 of making these facilities affordable have increased over time.
14 To the extent charges for these services are included as common
15 expenses where an assisted living facility is part of a
16 condominium project, clarification is needed regarding how the
17 expenses are assessed to unit owners of an association so that
18 unit owners who do not use the services are not charged for or



1 otherwise liable for the costs of those services offered by the
2 assisted living facility.

3 The purpose of this Act is to clarify that any and all
4 expenses related to the operation of an assisted living facility
5 in a condominium project, including but not limited to
6 administrative expenses to operate the assisted living facility,
7 compensation paid to employees, or vendors who provide assisted
8 living services to residents in the condominium, shall be
9 assessed against the unit owner only when the unit owner or
10 resident of the unit owner elects to utilize such services.

11 SECTION 2. Section 514A-3, Hawaii Revised Statutes, is
12 amended by amending the definition of "common expense" to read as
13 follows:

14 "Common expense" means and includes:
15 (1) Expenses of operation of the property; and
16 (2) All sums designated common expenses by or pursuant to
17 this chapter, the declaration or the bylaws[-], except
18 as provided in section 514A-15."

19 SECTION 3. Section 514A-15, Hawaii Revised Statutes, is
20 amended by amending subsection (a) to read as follows:

21 "(a) The common profits of the property shall be
22 distributed among, and the common expenses shall be charged to,



1 the apartment owners, including the developer, in proportion to
2 the common interest appurtenant to their respective apartments;
3 provided that in a mixed-use project containing apartments for
4 both residential and commercial use, such charges and
5 distributions may be apportioned in a fair and equitable manner
6 as set forth in the declaration; provided further that all
7 limited common elements costs and expenses, including but not
8 limited to, maintenance, repair, replacement, additions and
9 improvements shall be charged to the owner of the apartment to
10 which the limited common element is appurtenant in an equitable
11 manner as set forth in the declaration[-]; provided further that
12 any and all charges or assessments for health care services or
13 services relating to personal care that may be offered or
14 provided to unit owners or residents of unit owners at a
15 condominium licensed as an assisted living facility, shall be
16 made against only the units occupied by persons who utilize such
17 health care services and services relating to personal care, and
18 shall not be included as part of the common expenses of the
19 condominium.

20 For purposes of this subsection, "personal care" means the
21 following categories of activities:



1 (1) Activities of daily living, such as ambulation,
 2 mobility, transfer and lifting, positioning and
 3 turning, bowel and bladder care, toileting, bathing,
 4 dressing, grooming, feeding, exercise, and range of
 5 motion; and

6 (2) Instrumental activities of daily living which are
 7 directly related to the well-being of the resident,
 8 such as meal preparation; bed, kitchen, and bathroom
 9 cleanliness; housekeeping; laundry; essential errands;
 10 transportation; medication assistance; and maintenance
 11 of health records."

12 SECTION 4. Section 514B-3, Hawaii Revised Statutes, is
 13 amended by amending the definition of "common expenses" to read
 14 as follows:

15 "Common expenses" means expenditures made by, or financial
 16 liabilities of, the association for operation of the property,
 17 and shall include any allocations to reserves[-], except as
 18 provided in section 514B-144."

19 SECTION 5. Section 514B-142, Hawaii Revised Statutes, is
 20 amended by amending subsection (g) to read as follows:

21 (g) This section shall not be applicable to any
 22 condominium that seeks to become licensed as an assisted living



1 facility pursuant to title 11, chapter 90, Hawaii Administrative
 2 Rules, as amended. In the event a condominium is licensed as an
 3 assisted living facility, any and all health care services or
 4 services relating to personal care that may be offered or
 5 provided to unit owners or residents of unit owners at the
 6 condominium, shall be assessed against only the units occupied
 7 by persons who utilize such health care services or services
 8 relating to personal care, and shall not be included as part of
 9 the common expenses of the condominium.

10 For purposes of this subsection, "personal care" means the
 11 following categories of activities:

12 (1) Activities of daily living, such as ambulation,
 13 mobility, transfer and lifting, positioning and
 14 turning, bowel and bladder care, toileting, bathing,
 15 dressing, grooming, feeding, exercise, and range of
 16 motion; and

17 (2) Instrumental activities of daily living which are
 18 directly related to the well-being of the resident,
 19 such as meal preparation; bed, kitchen, and bathroom
 20 cleanliness; housekeeping; laundry; essential errands;
 21 transportation; medication assistance; and maintenance
 22 of health records."



1 SECTION 6. Section 514B-144, Hawaii Revised Statutes, is
2 amended to read as follows:

3 **"§514B-144 Association fiscal matters; assessments for**
4 **common expenses.** (a) Assessments shall be made based on a
5 budget adopted and distributed or made available to unit owners
6 at least annually by the board.

7 (b) Except for assessments under subsections (c), (d),
8 [~~and~~] (e), and (f), all common expenses shall be assessed
9 against all the units in accordance with the allocations under
10 section 514B-41. Any past due common expense assessment or
11 installment thereof shall bear interest at the rate established
12 by the association, provided that the rate shall not exceed
13 eighteen per cent per year.

14 (c) Assessments to pay a judgment against the association
15 under section 514B-147(a) may be made only against the units in
16 the condominium at the time the judgment was entered, in
17 proportion to their common expense allocations under section
18 514B-41.

19 (d) If any common expense is caused by the misconduct of
20 any unit owner, the association may assess that expense
21 exclusively against such owner's unit.



1 (e) If common expense liabilities are reallocated, common
2 expense assessments and any installment thereof not yet due
3 shall be recalculated in accordance with the reallocated common
4 expense liabilities.

5 (f) Any and all assessments for health care services or
6 services relating to personal care that may be offered or
7 provided to unit owners or residents of unit owners at a
8 condominium licensed as an assisted living facility, shall be
9 made against only the units occupied by persons who utilize such
10 health care services or services relating to personal care, and
11 shall not be included as part of the common expenses of the
12 condominium.

13 For purposes of this subsection, "personal care" means the
14 following categories of activities:

15 (1) Activities of daily living, such as ambulation,
16 mobility, transfer and lifting, positioning and
17 turning, bowel and bladder care, toileting, bathing,
18 dressing, grooming, feeding, exercise, and range of
19 motion; and

20 (2) Instrumental activities of daily living which are
21 directly related to the well-being of the resident,
22 such as meal preparation; bed, kitchen, and bathroom



1 cleanliness; housekeeping; laundry; essential errands;
2 transportation; medication assistance; and maintenance
3 of health records.

4 ~~[(f)]~~ (g) In the case of a voluntary conveyance, the
5 grantee of a unit shall be jointly and severally liable with the
6 grantor for all unpaid assessments against the latter for the
7 grantor's share of the common expenses up to the time of the
8 grant or conveyance, without prejudice to the grantee's right to
9 recover from the grantor the amounts paid by the grantee
10 therefor. Any such grantor or grantee is, however, entitled to
11 a statement from the board, either directly or through its
12 managing agent or resident manager, setting forth the amount of
13 the unpaid assessments against the grantor, and except as to the
14 amount of subsequently dishonored checks mentioned in such
15 statement as having been received within the thirty-day period
16 immediately preceding the date of such statement, the grantee is
17 not liable for, nor is the unit conveyed subject to a lien for,
18 any unpaid assessments against the grantor in excess of the
19 amount therein set forth.

20 ~~[(g)]~~ (h) No unit owner may exempt the unit owner from
21 liability for the unit owner's contribution towards the common
22 expenses by waiver of the use or enjoyment of any of the common



1 elements or by abandonment of the unit owner's unit. Subject to
2 such terms and conditions as may be specified in the declaration
3 or bylaws, any unit owner, by conveying his or her unit and
4 common interest to the association on behalf of all other unit
5 owners, may exempt himself or herself from common expenses
6 thereafter accruing.

7 ~~(h)~~ (i) The board, either directly or through its
8 managing agent or resident manager, shall notify the unit owners
9 in writing of maintenance fee increases at least thirty days
10 prior to such an increase."

11 SECTION 7. Statutory material to be repealed is bracketed
12 and stricken. New statutory material is underscored.

13 SECTION 8. This Act shall take effect on July 1, 2012, and
14 shall apply to any and all existing and future condominiums or
15 condominium projects in the State.



Report Title:

Condominiums; Common Expenses

Description:

Requires any and all assessments for health care services or services relating to personal care that are offered or provided to unit owners or residents at a condominium licensed as an assisted living facility to be assessed only against the units occupied by persons who utilize these services, and not be included as part of the common expenses of a condominium. (SD1)

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

