

# SB 3127

Measure Title: RELATING TO CONDOMINIUMS.

Report Title: Condominium Associations; Managing Agent;  
Condominium Boards

Description: Establishes provisions for condominium association annual meetings and quorum requirements. Provides that condominium associations may call for the review and discharge of a managing agent hired by the association upon a majority vote by the association members present. Effective July 1, 2014.

Companion: HB2656

Package: None

Current Referral: CPN

Introducer(s): KIDANI



February 14, 2014

## SB 3127 – SUPPORT WITH AMENDMENTS

Dear Senators,

I am submitting testimony on behalf of the Legislative Action Committee of Community Associations Institute (CAI). SB 3127 addresses to important issues condominiums face today. **Please find attached proposed amendment language that CAI supports to accomplish the Bill's intent.** Also, as President of Hawaii First one of Hawaii's largest association management companies, I also support SB3127 with the amendments attached.

**Annual Meeting Quorum:** A loophole in the current law allows directors to serve without having to stand for reelection. The bylaws of a condominium provide for an annual meeting; a meeting where directors are reelected and a mandatory tax resolution to file the association's income tax is adopted. If the association fails to obtain a quorum, often a board declares that they conducted the annual meeting with a result of no quorum and no business. The boards wait another year before scheduling the next annual meeting. Thus a director whose term has expired never stands for reelection and serves beyond their term. There are examples where such practice has occurred for years, particularly when a board in under fire for its decisions by homeowners. Boards have some ability to influence a quorum by the process they take to solicit proxies. The unintended consequence is that the association never approves its tax resolution for the tax-free rollover over of its funds which potentially imposes a future tax liability on the association. SB3127 mandates a second meeting within 90 days and reasonably reduces quorum assuring that directors will stand for reelection at the end of their term. Requiring an annual meeting and thus an election is a fundamental obligation of an association.

**Managing Agent Employment:** There is an alarming trend in new associations where bylaws provide difficult or in some cases impossible circumstances for a board to terminate the Managing Agent. I have attached two examples of many of association bylaws that exemplify the problem. In these examples, the board has no authority to terminate a management contract without the prior vote of the majority of all homeowners, and in some cases as much as 80% of all homeowners. Clearly the board is charged with the fiduciary duty in the management of the association and should be free from constraints to make business decisions for the benefit of the association. In every new association, the owners inherited the Managing Agent and were not involved with the initial selection by the developer. A Managing Agent is no more than a business that should earn its contract through its efforts and trust of the board. The board will be most knowledgeable about its every day dealings with the Managing Agent. On the other hand, boards serve the homeowners, and of a majority of homeowners want a new Managing Agent the board should be required to comply.





COMMUNITY ASSOCIATION MANAGEMENT

Queen's Court ◀ 800 Bethel Street, Suite 501 ◀ Honolulu, Hawaii 96813

Our proposed amendment to SB 3127 allows the board (the Principal) to employ and discharge the Managing Agent while respecting the rights of homeowners to require a management change. This issue is best addressed with a new Section 514B-107, HRS as attached. 514B-104 HRS should not be revised.

Community Associations Institute SUPPORTS SB3127 with the amendments attached.

Sincerely,

A handwritten signature in black ink, appearing to read "Richard Emery".

Richard Emery  
CAL Legislative Action Committee &  
President, Hawaii First, Inc.



JAN 23 2014

## A BILL FOR AN ACT

RELATING TO CONDOMINIUMS.

*the association is unable to obtain*

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

1 SECTION 1. Chapter 514B, Hawaii Revised Statutes, is  
2 amended by adding a new section to subpart B of part VI to be  
3 appropriately designated and to read as follows:  
4 "§514B- Association meetings; failure to obtain a  
5 quorum. (a) If a quorum is not present at the first annual  
6 meeting of the association in any year, then the association  
7 shall continue the meeting at least once for no more than ninety  
8 days.  
9 (b) If the association does not continue the first meeting  
10 pursuant to subsection (a), then the board of directors shall  
11 call a continuation of the annual meeting within ninety days.  
12 (c) The quorum requirement at the continued meeting shall  
13 be reduced to one-half of the requirement as stated in the  
14 bylaws."

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

See suggested alternative and substitute language  
re Section 514B-107, HRS, attached hereto.  
Section 514B-104, HRS, should not be revised.



- 1 (a) Except as provided in section 514B-105, and subject  
2 to the provisions of the declaration and bylaws, the  
3 association, even if unincorporated, may:
- 4 (1) Adopt and amend the declaration, bylaws, and rules and  
5 regulations;
  - 6 (2) Adopt and amend budgets for revenues, expenditures,  
7 and reserves and collect assessments for common  
8 expenses from unit owners, subject to section  
9 514B-148;
  - 10 (3) Hire and discharge ~~[managing agents and other]~~  
11 independent contractors, agents, and employees;
  - 12 (4) Institute, defend, or intervene in litigation or  
13 administrative proceedings in its own name on behalf  
14 of itself or two or more unit owners on matters  
15 affecting the condominium. For the purposes of  
16 actions under chapter 480, associations shall be  
17 deemed to be "consumers";
  - 18 (5) Make contracts and incur liabilities;
  - 19 (6) Regulate the use, maintenance, repair, replacement,  
20 and modification of common elements;
  - 21 (7) Cause additional improvements to be made as a part of  
22 the common elements;



- 1 (8) Acquire, hold, encumber, and convey in its own name  
2 any right, title, or interest to real or personal  
3 property; provided that:
- 4 (A) Designation of additional areas to be common  
5 elements or subject to common expenses after the  
6 initial filing of the declaration or bylaws shall  
7 require the approval of at least sixty-seven per  
8 cent of the unit owners;
- 9 (B) If the developer discloses to the initial buyer  
10 in writing that additional areas will be  
11 designated as common elements whether pursuant to  
12 an incremental or phased project or otherwise,  
13 the requirements of this paragraph shall not  
14 apply as to those additional areas; and
- 15 (C) The requirements of this paragraph shall not  
16 apply to the purchase of a unit for a resident  
17 manager, which may be purchased with the approval  
18 of the board;
- 19 (9) Subject to section 514B-38, grant easements, leases,  
20 licenses, and concessions through or over the common  
21 elements and permit encroachments on the common  
22 elements;



- 1 (10) Impose and receive any payments, fees, or charges for  
2 the use, rental, or operation of the common elements,  
3 other than limited common elements described in  
4 section 514B-35(2) and (4), and for services provided  
5 to unit owners;
- 6 (11) Impose charges and penalties, including late fees and  
7 interest, for late payment of assessments and levy  
8 reasonable fines for violations of the declaration,  
9 bylaws, rules, and regulations of the association,  
10 either in accordance with the bylaws or, if the bylaws  
11 are silent, pursuant to a resolution adopted by the  
12 board that establishes a fining procedure that states  
13 the basis for the fine and allows an appeal to the  
14 board of the fine with notice and an opportunity to be  
15 heard and providing that if the fine is paid, the unit  
16 owner shall have the right to initiate a dispute  
17 resolution process as provided by sections 514B-161,  
18 514B-162, or by filing a request for an administrative  
19 hearing under a pilot program administered by the  
20 department of commerce and consumer affairs;
- 21 (12) Impose reasonable charges for the preparation and  
22 recordation of amendments to the declaration,



# S.B. NO. 3127

- 1 documents requested for resale of units, or statements  
2 of unpaid assessments;
- 3 (13) Provide for cumulative voting through a provision in  
4 the bylaws;
- 5 (14) Provide for the indemnification of its officers,  
6 board, committee members, and agents, and maintain  
7 directors' and officers' liability insurance;
- 8 (15) Assign its right to future income including the right  
9 to receive common expense assessments, but only to the  
10 extent section 514B-105(e) expressly so provides;
- 11 (16) Exercise any other powers conferred by the declaration  
12 or bylaws;
- 13 (17) Exercise all other powers that may be exercised in  
14 this State by legal entities of the same type as the  
15 association, except to the extent inconsistent with  
16 this chapter;
- 17 (18) Exercise any other powers necessary and proper for the  
18 governance and operation of the association; [and]
- 19 (19) By regulation, subject to sections 514B-146, 514B-161,  
20 and 514B-162, require that disputes between the board  
21 and unit owners or between two or more unit owners  
22 regarding the condominium be submitted to nonbinding





# S.B. NO. 3127

1 alternative dispute resolution in the manner described  
2 in the regulation as a prerequisite to commencement of  
3 a judicial proceeding[-]; and  
4 (20) Notwithstanding any provision of law to the contrary,  
5 beginning July 1, 2014, review the hiring or continued  
6 employment of a managing agent at an association  
7 meeting. A managing agent may be discharged subject  
8 to review under this paragraph if voted on by a  
9 majority of unit owners present at an association  
10 meeting. Managing agents discharged under this review  
11 shall be employed on a month-to-month basis until a  
12 replacement managing agent is employed."

13 SECTION 3. Statutory material to be repealed is bracketed  
14 and stricken. New statutory material is underscored.

15 SECTION 4. This Act shall take effect on July 1, 2014.

16

INTRODUCED BY: Michelle Tidani



# S.B. NO. 3127

**Report Title:**

Condominium Associations; Managing Agent; Condominium Boards

**Description:**

Establishes provisions for condominium association annual meetings and quorum requirements. Provides that condominium associations may call for the review and discharge of a managing agent hired by the association upon a majority vote by the association members present. Effective July 1, 2014.

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



**SECTION 2. Section 514B-107, Hawaii Revised Statutes, is amended by adding new section (g), (h), and (i), to read as follows:**

(g) Notwithstanding any provision of the declaration and bylaws, the board of an association managed by a managing agent shall have the authority to employ and terminate a managing agent subject to subsection (h).

(h) Such employment may be terminated by vote of a majority of the unit owners at an association meeting. If the employment is terminated, the managing agent contract will continue for no longer than three months from the date of termination, and the board shall employ a different managing agent.

(i) An association where a majority of units are a member of a time share organization and regulated by HRS 514E is exempt from subsection (g) and (h).

(1) If the Managing Agent is an affiliate of or a person affiliated with the Developer then (i) the Developer must abstain from the vote, and (ii) the Developer's votes will not be considered when determining whether a Majority of the Owners have voted to give the notice;

(2) A decision not to renew the Management Contract cannot be made by the Board alone; the Board has no power or authority to do so; and

(3) Neither the Board nor any officer, Director, employee or agent of the Association can give the notice before a Majority of the Owners vote not to renew the Management Contract at an annual or special meeting of the Association. Any notice sent before then will be void.

**E. CANCELLATION BY THE ASSOCIATION.** The Management Contract must give the Association the right to cancel in each of the following situations:

1) **FOR CAUSE.** The Association must have the right to cancel the Management Contract whenever the Managing Agent breaches or fails to observe or perform a material part of the Management Contract and fails to cure its breach or default within the time permitted by the Management Contract;

2) **WITHOUT CAUSE.** The Association must have the right to cancel the Management Contract on not more than sixty (60) days' written notice. The Management Contract may provide that the Association cannot give this notice of cancellation unless (i) the Board recommends such action, and (ii) 80% of the Owners vote to do so at an annual or special meeting of the Association held within one year before such notice of cancellation. If the Management Contract contains such a provision, then:

(a) If the Managing Agent is an affiliate of or a person affiliated with the Developer then (i) the Developer must abstain from the vote, and (ii) the Developer's votes will not be considered when determining whether a Majority of the Owners have voted to give the notice of cancellation;

(b) A decision to cancel cannot be made by the Board alone; the Board has no power or authority to do so; and

(c) Neither the Board nor any officer, Director, employee or agent of the Association can give the notice of cancellation before a Majority of the

Owners vote to cancel the Management Contract at an annual or special meeting of the Association. Any notice sent before then will be void.

**F. CANCELLATION BY THE MANAGING AGENT.** The Management Contract must provide that Managing Agent has the right to cancel the Management Contract on not more than sixty (60) days' written notice.

**G. FEES.** The Management Contract must specifically state the fees to be paid to the Managing Agent by the Association. The fees do not have to be stated as a dollar amount. For example, the management fee may be set to a percentage of the Project's Common Expenses or to cost plus a percentage profit.

**H. BOND.** From time to time, the Managing Agent must provide evidence satisfactory to the Board that the Managing Agent is bonded under a fidelity bond in the minimum amount required by the Condominium Property Act.

**7.3 EMPLOYMENT OF RESIDENT MANAGER.** The Board may also employ a resident manager or may cause the Managing Agent to do so. In either case, the Board will set the compensation of any resident manager. The Board may delegate to the resident manager any of its powers and duties except those that, by law or under the Condominium Documents, it cannot delegate.

**7.4 LIMITATIONS ON AUTHORITY TO ENTER INTO CONTRACTS.** Neither the Association nor the Managing Agent may enter into a contract with someone else to furnish goods or services for the Common Elements or to the Association for a period longer than one year unless authorized by the vote or written consent of a Majority of the Owners Voting. The Developer must abstain from this vote. This rule does not apply, however, to:

- ❖ The Management Contract.
- ❖ A contract with a public utility company if the rates charged by it are regulated by the Public Utilities Commission. The term of the contract, however, must be the shortest term the supplier will accept at the regulated rate.
- ❖ Prepaid casualty and/or liability insurance policies not lasting more than three years, provided that the policy permits "short-rate cancellation" by the insured.

Partial List of Abuses that might require Legislation - Page 1 of 6 pages

1. Bylaws of the Association of Apartment Owners of Hokuia at 1288 Ala Moana Document number 3023804, Dated November 6, 2003, pages 15-16 (See item 7)

of the Association in litigation, arbitration, mediation, or administrative proceedings in matters relating to (i) enforcement of the Condominium Documents; (ii) damage to the Common Elements to the extent that the Association is obligated to maintain and repair it; (iii) damage to any part of any Apartment to the extent that the Association is obligated to maintain and repair it; or (iv) damage to the Apartments which arises out of, or is integrally related to, damage to any the Common Elements or to any part of any Apartment to the extent that the Association is obligated to maintain and repair them. If the Board or an Owner requests mediation of a dispute, the other party in the dispute shall be required to participate in mediation. Each party shall be wholly responsible for its own costs of participating in mediation, unless at the end of the mediation process, both parties agree that one party shall pay all or a specified portion of the mediation costs. If the Board or an Owner refuses to participate in the mediation of a particular dispute, a court may take this refusal into consideration when awarding costs and attorneys' fees.

**7.2 MANAGING AGENT.**

**A. MANAGING AGENT.** The Association must hire and at all times it must have a Managing Agent.

**B. QUALIFICATIONS.** The Managing Agent must be properly registered with the Real Estate Commission of the State of Hawaii. The Managing Agent may be the Developer or an affiliate of the Developer.

**C. SELECTION.** The Developer has the right to choose and employ the first Managing Agent for the Project. (At the outset, the Developer is the only Member of the Association.) If the first Managing Agent must be replaced for any reason, the Board will choose the replacement. The Board must use its best efforts to hire and keep a responsible company as the Managing Agent.

**D. MANAGEMENT CONTRACT.** The Managing Agent must sign a written contract (the "Management Contract"). Subject to the requirements of the Condominium Property Act:

**1) POWERS AND DUTIES.** The Management Contract may delegate to the Managing Agent any of the Board's powers and duties except those that, by law or under the Condominium Documents, it cannot delegate. It may also permit the Managing Agent to delegate its power and duties to one or more sub-agents for any period and upon any terms it deems proper. In all cases, the Managing Agent and any sub-agents will be subject to the

direction of the Board and to the limits listed in Section 7.4.

**2) TERM.** The Management Contract:

(a) May provide for an initial term of not more than one year from the Starting Date. The "Starting Date" is the date on which the Managing Agent must begin its performance. Unless otherwise provided in the Management Contract, the Starting Date will be the later of (i) the first date on which a deed of an Apartment is recorded, or (ii) the first date on which the City and County of Honolulu issues a temporary or permanent certificate of occupancy for an Apartment in the Project.

(b) May provide that after the first term and each later term ends, the contract will be renewed automatically unless a written notice canceling the Management Contract is sent by either party at least sixty (60) days before the renewal date. The Management Contract may provide that the Association cannot give this notice unless a Majority of the Owners vote to do so at an annual or special meeting of the Association held within one year before the renewal date. If the Management Contract contains such a provision, then:

(1) If the Managing Agent is an affiliate of or a person affiliated with the Developer then (i) the Developer must abstain from the vote, and (ii) the Developer's votes will not be considered when determining whether a Majority of the Owners have voted to give the notice;

(2) A decision not to renew the Management Contract cannot be made by the Board alone; the Board has no power or authority to do so; and

(3) Neither the Board nor any officer, Director, employee or agent of the Association can give the notice before a Majority of the Owners vote not to renew the Management Contract at an annual or special meeting of the Association. Any notice sent before then will be void.

**E. CANCELLATION BY THE ASSOCIATION.** The Management Contract must give the Association the right to cancel in each of the following situations:

**1) FOR CAUSE.** The Association must have the right to cancel the Management Contract whenever the Managing Agent breaches or fails to observe or perform a material part of the Management Contract and fails to cure its breach or default within the time permitted by the Management Contract;



P.O. Box 976  
Honolulu, Hawaii 96808

February 17, 2014

Honorable Rosalyn H. Baker  
Honorable Brian T. Tanaguchi  
Commerce and Consumer Protection  
415 South Beretania Street  
Honolulu, Hawaii 96813

Re: **SB 3127/ SUPPORT**

Dear Chair Baker, Vice-Chair Tanaguchi and Committee Members:

I am the Chair of the Community Associations Institute's Legislative Action Committee ("CAI"). CAI, which represents the association industry in this State, **supports SB 3127 with the Amendments recommended by Richard Emery in his testimony of February 14, 2014, submitted on behalf of CAI.**

**Annual Meeting Quorums must be lowered to prevent "rollover Boards"**. This Bill (*together with the amendments*) addresses the issue of many condominium associations being unable to conduct annual ownership meetings because of the "quorum requirements." The two most important issues that typically need to be addressed at these annual meetings are the election of directors and adopting the "tax rollover" resolution so that association can maintain its non-profit status. This Bill provides a mechanism so that this will happen on an annual basis and not allow for "rollover boards" (*i.e.*, boards that continue without elections).

**Managing Agent Contracts should be left to the Board to decide.** The other issue addressed by this Bill (*together with the amendments*) focuses on giving the power to association boards to terminate and enter into management company contracts. Not all condominium associations have this provision in their governing documents and many times there is a requirement of ownership approval of such termination or retention. This requirement is an unnecessary "hurdle" for association boards as they are mandated to administer the association's property and manage those that are hired to handle the day-to-day functions of the association. It is only logical that all condominium boards have the right to hire and terminate all contractors, employees and agents, including managing agents. The Bill does this as amended.

The amendments also provide a "safety net" or voice to the owners in the event that a majority of unit owners disagrees with the board's retention of a managing agent.

Honorable Rosalyn H. Baker  
Honorable Brian T. Tanaguchi  
February 17, 2014  
Page 2 of 2

Thank you for your time and consideration, and we respectfully request the Committee pass **SB 3127 with the proposed amendments**. Thank you.

Very truly yours,

A handwritten signature in black ink, appearing to read 'C. Porter', with a stylized, cursive flourish extending to the right.

Christian P. Porter



**HAWAII STATE ASSOCIATION OF PARLIAMENTARIANS  
LEGISLATIVE COMMITTEE  
P. O. Box 29213  
HONOLULU, HAWAII 96820-1613  
E-MAIL: [HSAP.LC@GMAIL.COM](mailto:HSAP.LC@GMAIL.COM)**

February 17, 2014

Honorable Senator Rosalyn H. Baker, Chair  
Honorable Senator Brian T. Taniguchi, Vice Chair  
Senate Committee on Commerce and Consumer Protection (CPN)  
Hawaii State Capitol, Room 229  
415 South Beretania Street  
Honolulu, HI 96813

**RE: Testimony with COMMENTS regarding SB3127; Hearing Date February 19, 2014 at 9:00 a.m.; sent via Internet**

Aloha Chair Baker, Vice-Chair Taniguchi, and Committee members,

Thank you for the opportunity to provide testimony on this bill on behalf of the Hawaii State Association of Parliamentarians ("HSAP").

I will address the larger issues presented by this bill below:

**A. Section 1 -- Association Meetings; Failure to obtain a quorum**

The bylaws of many condominium associations provide for annual meetings. At these meetings, reports are provided, directors are usually elected, a tax resolution is adopted, and there may be borrowing or expense related resolutions.

There are a few considerations associated with annual meetings that lead to the requirement for associations to have functioning annual meetings:

1. Many developers have handicapped associations through the use of boiler plate bylaws with unrealistic quorum amounts and voting procedures for official association action. This has caused difficulty in conducting business at annual meetings.
2. A few boards have simply decided that the effort and expense of continuing an annual meeting in order to obtain a quorum cannot be financially justified.
3. A few boards have used the failure to obtain a quorum as a mechanism to continue their term in office.<sup>1</sup>

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<sup>1</sup>This can backfire for the same board because a no quorum meeting would provide that more positions are up for election in a subsequent year, making a complete takeover by a temporary majority at the next annual meeting more likely.



4. There is a risk that the Internal Revenue Service will impose taxes on a condominium association for failure to formally adopt when it known as a rollover resolution.

The wording in SB3127, Section 1 is problematic because it doesn't entirely solve the problem.

**We worked with the Hawaii Chapter of the Community Associations Institute (CAI) to draft wording that was more precise. The wording is highlighted on the bill that is attached to these comments.**

### **B. Section 2 -- Relating to Managing Agents**

The proposed wording completely changes the responsibility for "reviewing and discharging" a managing agent from a board of directors to a majority of members present at an association meeting.

**The current wording in Section 2 presents the antithesis of good management and will have a completely negative effect on condominiums throughout the state.**

A Managing Agent is a vendor with a fiduciary relationship to the association. The Managing Agent receives direction from the board of directors. The board of directors has a duty to take care of and act on behalf of the association.

A condominium association is not a plebiscite where the members at an association meeting decide every element of the management agreement.

A further problem exists with developer imposed bylaws that make it nearly impossible for either a board or the association to discharge a managing agent. For example, one association's bylaws make it impossible for the board to fire a managing agent without prior notice at an association meeting and an 80% vote of the owners.

We heard concerns in the House Committee hearing about the differences between time-sharing and condominiums regarding this issue. Therefore, an exception has been proposed for associations which contain a majority of time-share units.

We propose the following:

1. The board must remain responsible for the hiring, supervising, and discharging a managing agent.
2. At an annual or a properly noticed special meeting, the owners by "vote of a majority of the unit owners" will have a simple right to reject a managing agent. This rejection shall act as an order for the board to find a different managing agent within a limited period of time.
3. This section would not apply to an association where a majority of the units are part of a time-sharing organization and regulated by the HRS Chapter 514E.

A majority of the unit owners currently has the power to remove and replace the entire board [HRS §514B-106(f)]. The voting requirement in the proposed change makes sense because it already provides for new management through a complete replacement of a board. That same voting level could easily extend to the board's subsequent removal of a managing agent

**We believe this balances (a) the board's responsibility for hiring a proper managing agent with (b) the association's right to exercise veto power in a way that doesn't become micro-management.**

**We worked with the CAI to draft wording that was more in line with this principle. The wording is attached to these comments on the last page.**

If you require any additional information, your call is most welcome. I may be contacted via phone: 423-6766 or by e-mail: [hsap.lc@gmail.com](mailto:hsap.lc@gmail.com). Thank you for the opportunity to present this testimony.

Sincerely,

**Steve Glanstein**

Digitally signed by Steve Glanstein  
DN: cn=Steve Glanstein, o, ou,  
email=Steveghi@gmail.com, c=US  
Location: Honolulu, HI  
Date: 2014.02.17 15:37:28 -10'00'

Steve Glanstein, Professional Registered Parliamentarian  
Chair, HSAP Legislative Committee  
SG:tbs/Attachment

JAN 23 2014

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6 meeting of the association in any year, then the association  
7 shall continue the meeting at least once for no more than ninety  
8 days.

9 (b) If the association does not continue the first meeting  
10 pursuant to subsection (a), then the board of directors shall  
11 call a continuation of the annual meeting within ninety days.

12 (c) The quorum requirement at the continued meeting shall  
13 be reduced to one-half of the requirement as stated in the  
14 bylaws."

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

*See suggested alternative and substitute language  
re Section 514B-107, HRS, attached hereto.  
Section 514B-104, HRS, should not be revised.*



- 1       (a) Except as provided in section 514B-105, and subject  
2 to the provisions of the declaration and bylaws, the  
3 association, even if unincorporated, may:
- 4       (1) Adopt and amend the declaration, bylaws, and rules and  
5             regulations;
  - 6       (2) Adopt and amend budgets for revenues, expenditures,  
7             and reserves and collect assessments for common  
8             expenses from unit owners, subject to section  
9             514B-148;
  - 10       (3) Hire and discharge ~~[managing agents and other]~~  
11            independent contractors, agents, and employees;
  - 12       (4) Institute, defend, or intervene in litigation or  
13            administrative proceedings in its own name on behalf  
14            of itself or two or more unit owners on matters  
15            affecting the condominium. For the purposes of  
16            actions under chapter 480, associations shall be  
17            deemed to be "consumers";
  - 18       (5) Make contracts and incur liabilities;
  - 19       (6) Regulate the use, maintenance, repair, replacement,  
20            and modification of common elements;
  - 21       (7) Cause additional improvements to be made as a part of  
22            the common elements;



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

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

9 (B) If the developer discloses to the initial buyer  
10 in writing that additional areas will be  
11 designated as common elements whether pursuant to  
12 an incremental or phased project or otherwise,  
13 the requirements of this paragraph shall not  
14 apply as to those additional areas; and

15 (C) The requirements of this paragraph shall not  
16 apply to the purchase of a unit for a resident  
17 manager, which may be purchased with the approval  
18 of the board;

19 (9) Subject to section 514B-38, grant easements, leases,  
20 licenses, and concessions through or over the common  
21 elements and permit encroachments on the common  
22 elements;



- 1 (10) Impose and receive any payments, fees, or charges for  
2 the use, rental, or operation of the common elements,  
3 other than limited common elements described in  
4 section 514B-35(2) and (4), and for services provided  
5 to unit owners;
- 6 (11) Impose charges and penalties, including late fees and  
7 interest, for late payment of assessments and levy  
8 reasonable fines for violations of the declaration,  
9 bylaws, rules, and regulations of the association,  
10 either in accordance with the bylaws or, if the bylaws  
11 are silent, pursuant to a resolution adopted by the  
12 board that establishes a fining procedure that states  
13 the basis for the fine and allows an appeal to the  
14 board of the fine with notice and an opportunity to be  
15 heard and providing that if the fine is paid, the unit  
16 owner shall have the right to initiate a dispute  
17 resolution process as provided by sections 514B-161,  
18 514B-162, or by filing a request for an administrative  
19 hearing under a pilot program administered by the  
20 department of commerce and consumer affairs;
- 21 (12) Impose reasonable charges for the preparation and  
22 recordation of amendments to the declaration,



# S.B. NO. 3127

- 1 documents requested for resale of units, or statements  
2 of unpaid assessments;
- 3 (13) Provide for cumulative voting through a provision in  
4 the bylaws;
- 5 (14) Provide for the indemnification of its officers,  
6 board, committee members, and agents, and maintain  
7 directors' and officers' liability insurance;
- 8 (15) Assign its right to future income, including the right  
9 to receive common expense assessments, but only to the  
10 extent section 514B-105(e) expressly so provides;
- 11 (16) Exercise any other powers conferred by the declaration  
12 or bylaws;
- 13 (17) Exercise all other powers that may be exercised in  
14 this State by legal entities of the same type as the  
15 association, except to the extent inconsistent with  
16 this chapter;
- 17 (18) Exercise any other powers necessary and proper for the  
18 governance and operation of the association; [and]
- 19 (19) By regulation, subject to sections 514B-146, 514B-161,  
20 and 514B-162, require that disputes between the board  
21 and unit owners or between two or more unit owners  
22 regarding the condominium be submitted to nonbinding



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1 alternative dispute resolution in the manner described  
2 in the regulation as a prerequisite to commencement of  
3 a judicial proceeding[-]; and  
4 (20) Notwithstanding any provision of law to the contrary,  
5 beginning July 1, 2014, review the hiring or continued  
6 employment of a managing agent at an association  
7 meeting. A managing agent may be discharged subject  
8 to review under this paragraph if voted on by a  
9 majority of unit owners present at an association  
10 meeting. Managing agents discharged under this review  
11 shall be employed on a month-to-month basis until a  
12 replacement managing agent is employed."

13 SECTION 3. Statutory material to be repealed is bracketed  
14 and stricken. New statutory material is underscored.

15 SECTION 4. This Act shall take effect on July 1, 2014.

16 INTRODUCED BY: Michelle Tidoni



**SECTION 2. Section 514B-107, Hawaii Revised Statutes, is amended by adding new subsections (g), (h), and (i), to read as follows:**

(g) Notwithstanding any provision of the declaration and bylaws, the board of an association managed by a managing agent shall have the authority to employ and terminate a managing agent subject to subsection (h).

(h) Such employment may be terminated by vote of a majority of the unit owners at an association meeting. If the employment is terminated, the managing agent contract will continue for no longer than three months from the date of termination, and the board shall employ a different managing agent.

(i) An association where a majority of units are a member of a time share organization and regulated by Chapter 514E HRS is exempt from subsection (g) and (h).

McCORRISTON MILLER MUKAI MACKINNON LLP

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February 18, 2014

Senator Rosalyn H. Baker, Chair  
Senator Brian T. Taniguchi, Vice Chair  
Members of the Committee on Commerce  
And Consumer Protection  
Twenty-Seventh Legislature  
Regular Session, 2014

Re: S.B. 3127  
Hearing on February 19, 2014, 9:00 a.m.  
Conference Room 229

Dear Chair, Vice-Chair and Members of the Committee:

My name is Charles Pear. I am appearing as legislative counsel for ARDA Hawaii.

ARDA Hawaii opposes the bill as presently drafted. ARDA Hawaii is currently having productive discussions regarding proposed revisions with some of the other stakeholders.

The bill as currently drafted would apply to time share condominiums.

In recent years, most time share resorts have been developed and are operated by major hospitality brands such as Disney, Westin, Hilton, Marriott and so on. In virtually every case, an affiliate of the brand owner serves as the managing agent of the condominium.

In addition, most of these hospitality companies own and operate a vacation club that allows owners of time share interests in a Hawaii resort to exchange their Hawaii use rights for the right to use other time share plans in their vacation club. For example, a owner in Disney's Aulani resort may choose instead to stay in the Animal Kingdom time share plan at Walt Disney World.

If the managing agent is discharged, however, then the project will no longer be branded as a Disney, Westin, Hilton or Marriott resort. In addition, the resort will no longer be a participating resort in the company's vacation club.

In time share plans, it is very common for only a handful of owners to attend a meeting of the association of owners. Under the bill as presently drafted, if a dozen owners attend a meeting and seven of them vote to terminate the management agreement, then the project would lose its branding and *all* of the owners could lose their rights to participate in the vacation club.

P. O. Box 2800 • Honolulu, Hawaii 96803-2800  
Five Waterfront Plaza, 4<sup>th</sup> Floor • 500 Ala Moana Boulevard • Honolulu, Hawaii 96813  
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Chair, Vice-Chair and Members,  
Senate Committee on Commerce  
And Consumer Protection  
February 18, 2014  
Page 2

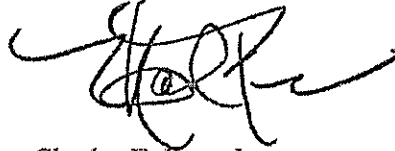
This is a very important decision for the members of a time share plan. While there may be valid reasons for an association to terminate its management agreement, such a decision should not be made without the consent of at least a majority of all of the owners, not just a majority of the handful that attend an association meeting.

For the foregoing reasons, ARDA opposes the bill at least as to a time share plan. We fully understand that circumstance may differ for a condominium used as a principal residence by the owners who live in the project. But if the committee is inclined to advance the bill, we ask that you require that the vote of a majority of all the owners, not just a vote of a majority of owners present, be required in the case of a time share condominium.

Thank you for your kind consideration of this legislation. I would be happy to take any questions if you think that I may be of assistance.

Very truly yours,

MCCORRISTON MILLER MUKAI MACKINNON LLP

A handwritten signature in black ink, appearing to read 'Charles E. Pear, Jr.', written over the typed name below.

Charles E. Pear, Jr.



9002 San Marco Court  
Orlando, Florida 32819  
(407) 418-7271

February 19, 2014

To: Honorable Rosalyn Baker, Chair  
Senate Committee on Commerce and Consumer Protection

RE: **SB 3127 – Relating to Condominiums – In Opposition**  
Conference Room 229; 9:00 AM

Chair Baker, Vice Chair Taniguchi and members of the committee:

Starwood Vacation Ownership (“Starwood”) opposes SB 3127 which establishes provisions for condominium association annual meetings and quorum requirements and provides that condominium associations may call for the review and discharge of a managing agent hired by the association upon a majority vote by the association members present.

This bill would allow an extremely small majority of owners to terminate an existing management contract by permitting termination by a majority vote present at a meeting versus a majority vote of the total voting interest. Most timeshare owners do not participate in the annual meeting in person. This provision could allow 3 or 4 owners to make an extremely significant decision on behalf of thousands of owners.

The provisions in SB 3127 are not appropriate for timeshare resorts. If the committee is considering passing this bill, we would like to request an exemption for timeshare resort condominiums.

Thank you for the opportunity to comment on this measure.

Robin Suarez  
Vice President/Associate General Counsel  
Starwood Vacation Ownership

**SB3127**

Submitted on: 2/18/2014

Testimony for CPN on Feb 19, 2014 09:00AM in Conference Room 229

<b>Submitted By</b>	<b>Organization</b>	<b>Testifier Position</b>	<b>Present at Hearing</b>
Leimomi Khan	Individual	Support	No

Comments: I am a condominium owner. If I understand this bill correctly, if the Association is unable to transact business at a scheduled annual meeting because of lack of quorum, it would schedule another meeting within 90 days with the quorum at 50%. Fully support this provision. It eliminates the possibility of a board retaining themselves for an indefinite period and further seems reasonable especially since these days so many owners live off-island.

Please note that testimony submitted less than 24 hours prior to the hearing, improperly identified, or directed to the incorrect office, may not be posted online or distributed to the committee prior to the convening of the public hearing.

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**SB3127**

Submitted on: 2/16/2014

Testimony for CPN on Feb 19, 2014 09:00AM in Conference Room 229

Submitted By	Organization	Testifier Position	Present at Hearing
Ted Walkey	Individual	Support	No

Comments:

Please note that testimony submitted less than 24 hours prior to the hearing, improperly identified, or directed to the incorrect office, may not be posted online or distributed to the committee prior to the convening of the public hearing.

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