

JAN 19 2017

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# A BILL FOR AN ACT

RELATING TO CONDOMINIUM GOVERNING INSTRUMENTS.

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

1           SECTION 1. Section 514A-11, Hawaii Revised Statutes, is  
2 amended to read as follows:

3           "§514A-11 Recordation and contents of declaration. The  
4 bureau of conveyances and the land court shall immediately set  
5 up the mechanics and method by which recordation of a master  
6 deed or lease and the declaration may be made. Provisions shall  
7 be made for the recordation of instruments affecting the  
8 individual apartments on subsequent resales, mortgages, and  
9 other encumbrances, as is done with all other real estate  
10 recordations; provided that land court certificates of title  
11 shall not be issued for apartments. The declaration to which  
12 section 514A-20 refers shall express the following particulars:

13           (1) Description of the land, whether leased or in fee  
14           simple, on which the building or buildings and  
15           improvements are or are to be located;

16           (2) Description of the building or buildings, stating the  
17           number of stories and basements, the number of



- 1           apartments, and the principal materials of which it or  
2           they is or are constructed or to be constructed;
- 3           (3) The apartment number of each apartment, and a  
4           statement of its location, approximate area, number of  
5           rooms, immediate common element to which it has  
6           access, designated parking stall if considered a  
7           limited common element, and any other data necessary  
8           for its proper identification;
- 9           (4) Description of the common elements;
- 10          (5) Description of the limited common elements, if any,  
11          stating to which apartments their use is reserved;
- 12          (6) The percentage of undivided interest in the common  
13          elements appertaining to each apartment and its owner  
14          for all purposes, including voting;
- 15          (7) Statement of the purposes for which the building or  
16          buildings and each of the apartments are intended and  
17          restricted as to use;
- 18          (8) The name of a person to receive service of process in  
19          the cases hereinafter provided, together with the  
20          residence or place of business of the person which



1 shall be within the county in which the property is  
2 located;

3 (9) Provision as to the percentage of votes by the  
4 apartment owners which shall be determinative of  
5 whether to rebuild, repair, or restore the property in  
6 the event of damage or destruction of all or part of  
7 the property;

8 (10) Any further details in connection with the property  
9 that the person executing the declaration may deem  
10 desirable to set forth consistent with this chapter;

11 (11) The method by which the declaration may be amended,  
12 consistent with this chapter; provided that an  
13 amendment to the declarations of all condominium  
14 projects existing as of May 22, 1991, and all  
15 condominium projects created thereafter shall require  
16 [a], after any proposed amendment, rationale, and  
17 ballots for voting are mailed by the board to the  
18 owners at the expense of the association for vote or  
19 written consent, the vote or written consent of  
20 seventy-five per cent of all apartment owners[7];  
21 provided further that, to be valid, the vote or



1           written consent must be obtained within three hundred  
2           sixty-five days after the mailing; provided further  
3           that voting shall cease if the required approval is  
4           obtained prior to the passage of three hundred sixty-  
5           five days after the mailing, upon which the proposed  
6           amendment shall be duly adopted, or if a sufficient  
7           percentage have voted in the negative so that passage  
8           is unobtainable; provided further that if at least  
9           seventy-five per cent approval of all apartment owners  
10           is not obtained by the three hundred sixty-fifth day  
11           after the mailing, then the amendment shall be duly  
12           adopted if at least seventy-five per cent of those  
13           apartment owners who voted approved the amendment;  
14           except as otherwise provided in this chapter; provided  
15           further that the declarations of condominium projects  
16           having five or fewer apartments may provide for the  
17           amendment thereof by a vote or written consent of more  
18           than seventy-five per cent of all apartment owners;  
19           (12) Description as to any additions, deletions,  
20           modifications, and reservations as to the property,  
21           including without limitation provisions concerning the



1 merger or addition of later phases of the project. To  
2 the extent provided in the declaration, an amendment  
3 to the declaration that is made to implement those  
4 additions, deletions, modifications, reservations, or  
5 merger provisions shall require the vote or written  
6 consent of only the declarant or such percentage of  
7 apartment owners as is provided in the declaration;  
8 and

9 (13) A declaration subject to the penalties set forth in  
10 section 514A-49(b) that the condominium property  
11 regime is in compliance with all zoning and building  
12 ordinances and codes, and all other permitting  
13 requirements pursuant to section 514A-1.6, and  
14 specifying in the case of a property which includes  
15 one or more existing structures being converted to  
16 condominium status:

17 (A) Any variances which have been granted to achieve  
18 such compliance; and

19 (B) Whether, as the result of the adoption or  
20 amendment of any ordinances or codes, the project



1                   presently contains any legal non-conforming uses  
2                   or structures;  
3                   except that a property that is registered pursuant to  
4                   section 514A-31 shall instead provide this declaration  
5                   pursuant to [§]section[§] 514A-40."

6           SECTION 2. Section 514A-82, Hawaii Revised Statutes, is  
7 amended by amending subsection (b) to read as follows:

8           "(b) In addition to the requirements of subsection (a), the  
9 bylaws shall be consistent with the following provisions:

10           (1) At any regular or special meeting of the apartment  
11           owners, any one or more members of the board of  
12           directors may be removed by the apartment owners and  
13           successors shall then and there be elected for the  
14           remainder of the term to fill the vacancies thus  
15           created. The removal and replacement shall be by a  
16           vote of a majority of the apartment owners and,  
17           otherwise, in accordance with all applicable  
18           requirements and procedures in the bylaws for the  
19           removal and replacement of directors. If removal and  
20           replacement is to occur at a special association  
21           meeting, the call for the meeting shall be by the



1 president or by a petition to the secretary or  
2 managing agent signed by not less than twenty-five per  
3 cent of the apartment owners as shown in the  
4 association's record of ownership; provided that if  
5 the secretary or managing agent shall fail to send out  
6 the notices for the special meeting within fourteen  
7 days of receipt of the petition, then the petitioners  
8 shall have the authority to set the time, date, and  
9 place for the special meeting and to send out the  
10 notices for the special meeting in accordance with the  
11 requirements of the bylaws. Except as otherwise  
12 provided in this section, the meeting for the removal  
13 and replacement from office of directors shall be  
14 scheduled, noticed, and conducted in accordance with  
15 the bylaws of the association;

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

19 (A) Each one of the particulars set forth in this  
20 subsection shall be embodied in the bylaws  
21 always; [~~and~~]



1           (B) Any proposed bylaws with the rationale for the  
2           proposal may be submitted by the board of  
3           directors or by a volunteer apartment owners'  
4           committee. If submitted by that committee, the  
5           proposal shall be accompanied by a petition  
6           signed by not less than twenty-five per cent of  
7           the apartment owners as shown in the  
8           association's record of ownership. The proposed  
9           bylaws, rationale, and ballots for voting on any  
10          proposed bylaw shall be mailed by the board of  
11          directors to the owners at the expense of the  
12          association for vote or written consent without  
13          change within thirty days of the receipt of the  
14          petition by the board of directors[-];

15          (C) The vote or written consent required to adopt the  
16          proposed bylaw shall not be less than sixty-five  
17          per cent of all apartment owners; provided that  
18          if at least sixty-five per cent approval of all  
19          apartment owners is not obtained by the three  
20          hundred sixty-fifth day after the mailing, then  
21          the proposed bylaw shall be duly adopted if at





1                   least sixty-five per cent of those apartment  
2                   owners who voted approved the bylaw;  
3           (D) To be valid, the vote or written consent must be  
4                   obtained within three hundred sixty-five days  
5                   after mailing for a proposed bylaw submitted by  
6                   either the board of directors or a volunteer  
7                   apartment owners' committee[-]; provided further  
8                   that voting shall cease if the required approval  
9                   is obtained prior to the passage of three hundred  
10                  sixty-five days after the mailing, upon which the  
11                  proposed bylaw shall be duly adopted, or if a  
12                  sufficient percentage have voted in the negative  
13                  so that passage is unobtainable;  
14           (E) If the bylaw is duly adopted, then the board  
15                  shall cause the bylaw amendment to be recorded in  
16                  the bureau of conveyances or filed in the land  
17                  court, as the case may be[-]; and  
18           (F) The volunteer apartment owners' committee shall  
19                  be precluded from submitting a petition for a  
20                  proposed bylaw that is substantially similar to  
21                  that which has been previously mailed to the



1 owners within one year after the original  
2 petition was submitted to the board.

3 This paragraph shall not preclude any apartment owner  
4 or voluntary apartment owners' committee from  
5 proposing any bylaw amendment at any annual  
6 association meeting;

7 (3) Notices of association meetings, whether annual or  
8 special, shall be sent to each member of the  
9 association of apartment owners at least fourteen days  
10 prior to the meeting and shall contain at least:

11 (A) The date, time, and place of the meeting;

12 (B) The items on the agenda for the meeting; and

13 (C) A standard proxy form authorized by the  
14 association, if any;

15 (4) No resident manager or managing agent shall solicit,  
16 for use by the manager or managing agent, any proxies  
17 from any apartment owner of the association of owners  
18 that employs the resident manager or managing agent,  
19 nor shall the resident manager or managing agent cast  
20 any proxy vote at any association meeting except for  
21 the purpose of establishing a quorum. Any board of



1 directors that intends to use association funds to  
2 distribute proxies, including the standard proxy form  
3 referred to in paragraph (3), shall first post notice  
4 of its intent to distribute proxies in prominent  
5 locations within the project at least thirty days  
6 prior to its distribution of proxies; provided that if  
7 the board receives within seven days of the posted  
8 notice a request by any owner for use of association  
9 funds to solicit proxies accompanied by a statement,  
10 the board shall mail to all owners either:

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

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

19 The statement shall not exceed one hundred words,  
20 indicating the owner's qualifications to serve on the  
21 board and reasons for wanting to receive proxies;



- 1           (5) A director who has a conflict of interest on any issue  
2                   before the board shall disclose the nature of the  
3                   conflict of interest prior to a vote on that issue at  
4                   the board meeting, and the minutes of the meeting  
5                   shall record the fact that a disclosure was made;
- 6           (6) The apartment owners shall have the irrevocable right,  
7                   to be exercised by the board of directors, to have  
8                   access to each apartment from time to time during  
9                   reasonable hours as may be necessary for the operation  
10                  of the property or for making emergency repairs  
11                  therein necessary to prevent damage to the common  
12                  elements or to another apartment or apartments;
- 13          (7) An owner shall not act as an officer of an association  
14                  and an employee of the managing agent employed by the  
15                  association;
- 16          (8) An association's employees shall not engage in selling  
17                  or renting apartments in the condominium in which they  
18                  are employed except association-owned units, unless  
19                  such activity is approved by an affirmative vote of  
20                  sixty-five per cent of the membership;



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



1 educational materials, and economy travel expenses.

2 Except for economy travel expenses within the State,

3 all other travel expenses incurred under this

4 subsection shall be subject to the requirements of

5 paragraph (10);

6 (13) A lien created pursuant to section 514A-90 may be

7 enforced by the association in any manner permitted by

8 law, including nonjudicial or power of sale

9 foreclosure procedures authorized by chapter 667; and

10 (14) If the bylaws provide for cumulative voting by the

11 owners, the owners may so vote if an owner gives

12 notice of the owner's intent to cumulatively vote

13 before voting commences.

14 The provisions of this subsection shall be deemed incorporated

15 into the bylaws of all condominium projects existing as of

16 January 1, 1988, and all condominium projects created after that

17 date."

18 SECTION 3. Section 514B-23, Hawaii Revised Statutes, is

19 amended to read as follows:

20 "§514B-23 Amendments to governing instruments. (a) The

21 declaration, bylaws, condominium map, or other constituent



1 documents of any condominium created before July 1, 2006 may be  
2 amended to achieve any result permitted by this chapter,  
3 regardless of what applicable law provided before July 1, 2006.

4 (b) An amendment to the declaration, bylaws, condominium  
5 map or other constituent documents authorized by this section  
6 may be adopted by the vote or written consent of a majority of  
7 the unit owners; provided that if majority approval is not  
8 obtained by the three hundred sixty-fifth day after the mailing  
9 required by this subsection, then the proposed amendment shall  
10 be duly adopted if at least a majority of the unit owners who  
11 voted approved the amendment. Any proposed amendments,  
12 rationale, and ballots for voting shall be mailed by the board  
13 to the owners at the expense of the association for vote or  
14 written consent. To be valid, the vote or written consent must  
15 be obtained within three hundred sixty-five days after mailing.  
16 Voting shall cease if the required approval is obtained prior to  
17 the passage of three hundred sixty-five days, upon which the  
18 proposed bylaw shall be duly adopted, or if a sufficient  
19 percentage have voted in the negative so that passage is  
20 unobtainable; provided that any amendment adopted pursuant to  
21 this section shall not invalidate the reserved rights of a



1 developer. If an amendment grants to any person any rights,  
2 powers, or privileges permitted by this chapter, all correlative  
3 obligations, liabilities, and restrictions in this chapter also  
4 apply to that person."

5 SECTION 4. Section 514B-32, Hawaii Revised Statutes, is  
6 amended by amending subsection (a) to read as follows:

7 "(a) A declaration shall describe or include the  
8 following:

- 9 (1) The land submitted to the condominium property regime;
- 10 (2) The number of the condominium map filed concurrently  
11 with the declaration;
- 12 (3) The number of units in the condominium property  
13 regime;
- 14 (4) The unit number of each unit and common interest  
15 appurtenant to each unit;
- 16 (5) The number of buildings and projects in the  
17 condominium property regime, and the number of stories  
18 and units in each building;
- 19 (6) The permitted and prohibited uses of each unit;
- 20 (7) To the extent not shown on the condominium map, a  
21 description of the location and dimensions of the





1 horizontal and vertical boundaries of any unit. Unit  
2 boundaries may be defined by physical structures or,  
3 if a unit boundary is not defined by a physical  
4 structure, by spatial coordinates;

5 (8) The condominium property regime's common elements;

6 (9) The condominium property regime's limited common  
7 elements, if any, and the unit or units to which each  
8 limited common element is appurtenant;

9 (10) The total percentage of the common interest that is  
10 required to approve rebuilding, repairing, or  
11 restoring the condominium property regime if it is  
12 damaged or destroyed;

13 (11) The total percentage of the common interest, and any  
14 other approvals or consents, that are required to  
15 amend the declaration. Except as otherwise  
16 specifically provided in this chapter, and except for  
17 any amendments made pursuant to reservations set forth  
18 in paragraph (12), [~~the approval of the owners of at~~  
19 ~~least sixty seven per cent of the common interest~~  
20 ~~shall be required for]~~ all amendments to the  
21 declaration[~~r~~] shall require, after any proposed



1 amendment, rationale, and ballots for voting are  
2 mailed by the board to the owners at the expense of  
3 the association for vote or written consent, the vote  
4 or written consent of sixty-seven per cent of all unit  
5 owners; provided that, to be valid, the vote or  
6 written consent must be obtained within three hundred  
7 sixty-five days after the mailing; provided further  
8 that voting shall cease if the required approval is  
9 obtained prior to the passage of three hundred sixty-  
10 five days after the mailing, upon which the proposed  
11 amendment shall be duly adopted, or if a sufficient  
12 percentage have voted in the negative so that passage  
13 is unobtainable; provided further that if at least  
14 sixty-seven per cent approval of all unit owners is  
15 not obtained by the three hundred sixty-fifth day  
16 after the mailing, then the amendment shall be duly  
17 adopted if at least sixty-seven per cent of those unit  
18 owners who voted approved the amendment;

19 (12) Any rights that the developer or others reserve  
20 regarding the condominium property regime, including,  
21 without limitation, any development rights, and any



1 reservations to modify the declaration or condominium  
2 map. An amendment to the declaration made pursuant to  
3 the exercise of those reserved rights shall require  
4 only the consent or approval, if any, specified in the  
5 reservation; and

6 (13) A declaration, subject to the penalties set forth in  
7 section 514B-69(b), that the condominium property  
8 regime is in compliance with all zoning and building  
9 ordinances and codes, and all other permitting  
10 requirements pursuant to section 514B-5 and chapter  
11 205, including section 205-4.6 where applicable. In  
12 the case of a project in the agricultural district  
13 classified pursuant to chapter 205, the declaration,  
14 subject to the penalties set forth in section 514B-  
15 69(b), shall include an additional statement that  
16 there are no private restrictions limiting or  
17 prohibiting agricultural uses or activities in  
18 compliance with section 205-4.6. In the case of a  
19 property that includes one or more existing structures  
20 being converted to condominium property regime status,



1 the declaration required by this section shall  
2 specify:

3 (A) Any variances that have been granted to achieve  
4 the compliance; and

5 (B) Whether, as the result of the adoption or  
6 amendment of any ordinances or codes, the project  
7 presently contains any legal nonconforming  
8 conditions, uses, or structures.

9 A property that is registered pursuant to section  
10 514B-51 shall instead provide the required declaration  
11 pursuant to section 514B-54. If a developer is  
12 converting a structure to condominium property regime  
13 status and the structure is not in compliance with all  
14 zoning and building ordinances and codes, and all  
15 other permitting requirements pursuant to section  
16 514B-5, and the developer intends to use purchaser's  
17 funds pursuant to the requirements of section 514B-92  
18 or 514B-93 to cure the violation or violations, then  
19 the declaration required by this paragraph may be  
20 qualified to identify with specificity each violation



1           and the requirement to cure the violation by a date  
2           certain."

3           SECTION 5. Section 514B-108, Hawaii Revised Statutes, is  
4 amended by amending subsection (e) to read as follows:

5           "(e) The bylaws may be amended at any time by the vote or  
6 written consent of at least sixty-seven per cent of all unit  
7 owners[-]; provided that if at least sixty-seven per cent  
8 approval of all unit owners is not obtained by the three hundred  
9 sixty-fifth day after the mailing required by this subsection,  
10 then the proposed bylaw shall be duly adopted if at least sixty-  
11 seven per cent of those unit owners who voted approved the  
12 bylaw. Any proposed bylaws together with the detailed rationale  
13 for the proposal may be submitted by the board or by a volunteer  
14 unit owners group. If submitted by that group, the proposal  
15 shall be accompanied by a petition signed by not less than  
16 twenty-five per cent of the unit owners as shown in the  
17 association's record of ownership. The proposed bylaws,  
18 rationale, and ballots for voting on any proposed bylaw shall be  
19 mailed by the board to the owners at the expense of the  
20 association for vote or written consent without change within  
21 thirty days of the receipt of the petition by the board. The



1 vote or written consent, to be valid, must be obtained within  
2 three hundred sixty-five days after mailing for a proposed bylaw  
3 submitted by either the board or a volunteer unit owners group.  
4 Voting shall cease if the required approval is obtained prior to  
5 the passage of three hundred sixty-five days, upon which the  
6 proposed bylaw shall be duly adopted, or if a sufficient  
7 percentage have voted in the negative so that passage is  
8 unobtainable. If the bylaw is duly adopted, the board shall  
9 cause the bylaw amendment to be recorded. The volunteer unit  
10 owners group shall be precluded from submitting a petition for a  
11 proposed bylaw that is substantially similar to that which has  
12 been previously mailed to the owners within three hundred sixty-  
13 five days after the original petition was submitted to the  
14 board.

15 This subsection shall not preclude any unit owner or  
16 volunteer unit owners group from proposing any bylaw amendment  
17 at any annual association meeting."

18 SECTION 6. Statutory material to be repealed is bracketed  
19 and stricken. New statutory material is underscored.

20



1 SECTION 7. This Act shall take effect upon its approval.

2

INTRODUCED BY:

Kal Rhoah



# S.B. NO. 104

**Report Title:**

Condominiums; Governing Instruments; Declarations; Bylaws; Votes

**Description:**

Clarifies the procedures to amend condominium association declarations, bylaws, and other governing instruments.

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

