

JAN 25 2017

A BILL FOR AN ACT

RELATING TO CONDOMINIUMS.

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

1 SECTION 1. Section 514A-82, Hawaii Revised Statutes, is
2 amended to read as follows:

3 "**§514A-82 Contents of bylaws.** (a) The bylaws shall provide
4 for at least the following:

5 (1) Board of directors:

6 (A) The election of a board of directors;

7 (B) The number of persons constituting the board;
8 provided that condominiums with more than one
9 hundred individual apartment units shall have an
10 elected board of not less than nine members
11 unless not less than sixty-five per cent of all
12 apartment owners vote by mail ballot, or at a
13 special or annual meeting, to reduce the minimum
14 number of directors;

15 (C) That for the initial term of office, directors
16 shall serve for a term of three years or the term



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1 as specified by the bylaws or until their
2 successors have been elected or appointed;
3 (D) The powers and duties of the board;
4 (E) The compensation, if any, of the directors; and
5 (F) Whether or not the board may engage the services
6 of a manager or managing agent, or both, and
7 specifying which of the powers and duties granted
8 to the board by this chapter or otherwise may be
9 delegated by the board to either or both of them;
10 (2) Method of calling meetings of the apartment owners;
11 what percentage, if other than a majority of apartment
12 owners, constitutes a quorum; what percentage,
13 consistent with this chapter, is necessary to adopt
14 decisions binding on all apartment owners and that
15 votes allocated to any area that constitutes a common
16 element under section 514A-13(h) shall not be cast at
17 any association meeting, regardless of whether it is
18 so designated in the declaration;
19 (3) Election of a president from among the board of
20 directors who shall preside over the meetings of the



- 1 board of directors and of the association of apartment
2 owners;
- 3 (4) Election of a secretary who shall keep the minute book
4 wherein resolutions shall be recorded;
- 5 (5) Election of a treasurer who shall keep the financial
6 records and books of account;
- 7 (6) Operation of the property, payment of the common
8 expenses, and determination and collection of the
9 common charges;
- 10 (7) Manner of collecting common expenses, expenses, costs,
11 and fees recoverable by the association under section
12 514A-94, and any penalties and late charges;
- 13 (8) Designation and removal of personnel necessary for the
14 maintenance, repair, and replacement of the common
15 elements;
- 16 (9) Method of adopting and amending administrative rules
17 governing the details of the operation and use of the
18 common elements;
- 19 (10) The restrictions on and requirements respecting the
20 use and maintenance of the apartments and the use of
21 the common elements, not set forth in the declaration,



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1 as are designed to prevent unreasonable interference
2 with the use of their respective apartments and of the
3 common elements by the several apartment owners;

4 (11) The first meeting of the association of apartment
5 owners shall be held not later than one hundred eighty
6 days after recordation of the first apartment
7 conveyance; provided forty per cent or more of the
8 project has been sold and recorded. If forty per cent
9 of the project is not sold and recorded at the end of
10 one year, an annual meeting shall be called; provided
11 ten per cent of the apartment owners so request;

12 (12) All members of the board of directors shall be owners,
13 co-owners, vendees under an agreement of sale, or an
14 officer of any corporate owner of an apartment. The
15 partners in a general partnership and the general
16 partners of a limited partnership shall be deemed to
17 be the owners of an apartment for this purpose. There
18 shall not be more than one representative on the board
19 of directors from any one apartment;

20 (13) A director shall not cast any proxy vote at any board
21 meeting, nor shall a director vote at any board



- 1 meeting on any issue in which the director has a
2 conflict of interest;
- 3 (14) No resident manager of a condominium shall serve on
4 its board of directors;
- 5 (15) The board of directors shall meet at least once a
6 year;
- 7 (16) All association and board of directors meetings shall
8 be conducted in accordance with the most current
9 edition of Robert's Rules of Order;
- 10 (17) All meetings of the association of apartment owners
11 shall be held at the address of the condominium
12 project or elsewhere within the State as determined by
13 the board of directors; ~~and~~
- 14 (18) Penalties chargeable against persons for violation of
15 the covenants, conditions, or restrictions set forth
16 in the declaration, or of the bylaws and
17 administrative rules adopted pursuant thereto, method
18 of determination of violations, and manner of
19 enforcing penalties, if any ~~[-]~~; and



1 (19) All members of the board of directors shall be
2 required to receive eight hours of condominium law
3 education annually from the commission.

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

6 (1) At any regular or special meeting of the apartment
7 owners, any one or more members of the board of
8 directors may be removed by the apartment owners and
9 successors shall then and there be elected for the
10 remainder of the term to fill the vacancies thus
11 created. The removal and replacement shall be by a
12 vote of a majority of the apartment owners and,
13 otherwise, in accordance with all applicable
14 requirements and procedures in the bylaws for the
15 removal and replacement of directors. If removal and
16 replacement is to occur at a special association
17 meeting, the call for the meeting shall be by the
18 president or by a petition to the secretary or
19 managing agent signed by not less than twenty-five per
20 cent of the apartment owners as shown in the
21 association's record of ownership; provided that if



1 the secretary or managing agent shall fail to send out
2 the notices for the special meeting within fourteen
3 days of receipt of the petition, then the petitioners
4 shall have the authority to set the time, date, and
5 place for the special meeting and to send out the
6 notices for the special meeting in accordance with the
7 requirements of the bylaws. Except as otherwise
8 provided in this section, the meeting for the removal
9 and replacement from office of directors shall be
10 scheduled, noticed, and conducted in accordance with
11 the bylaws of the association;

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

15 (A) Each one of the particulars set forth in this
16 subsection shall be embodied in the bylaws
17 always; and

18 (B) Any proposed bylaws with the rationale for the
19 proposal may be submitted by the board of
20 directors or by a volunteer apartment owners'
21 committee. If submitted by that committee, the



1 proposal shall be accompanied by a petition
2 signed by not less than twenty-five per cent of
3 the apartment owners as shown in the
4 association's record of ownership. The proposed
5 bylaws, rationale, and ballots for voting on any
6 proposed bylaw shall be mailed by the board of
7 directors to the owners at the expense of the
8 association for vote or written consent without
9 change within thirty days of the receipt of the
10 petition by the board of directors. The vote or
11 written consent required to adopt the proposed
12 bylaw shall not be less than sixty-five per cent
13 of all apartment owners; provided that the vote
14 or written consent must be obtained within three
15 hundred sixty-five days after mailing for a
16 proposed bylaw submitted by either the board of
17 directors or a volunteer apartment owners'
18 committee. If the bylaw is duly adopted, then
19 the board shall cause the bylaw amendment to be
20 recorded in the bureau of conveyances or filed in
21 the land court, as the case may be. The



1 volunteer apartment owners' committee shall be
2 precluded from submitting a petition for a
3 proposed bylaw that is substantially similar to
4 that which has been previously mailed to the
5 owners within one year after the original
6 petition was submitted to the board.

7 This paragraph shall not preclude any apartment owner
8 or voluntary apartment owners' committee from
9 proposing any bylaw amendment at any annual
10 association meeting;

11 (3) Notices of association meetings, whether annual or
12 special, shall be sent to each member of the
13 association of apartment owners at least fourteen days
14 prior to the meeting and shall contain at least:

- 15 (A) The date, time, and place of the meeting;
- 16 (B) The items on the agenda for the meeting; and
- 17 (C) A standard proxy form authorized by the
18 association, if any;

19 (4) No resident manager or managing agent shall solicit,
20 for use by the manager or managing agent, any proxies
21 from any apartment owner of the association of owners



1 that employs the resident manager or managing agent,
2 nor shall the resident manager or managing agent cast
3 any proxy vote at any association meeting except for
4 the purpose of establishing a quorum. Any board of
5 directors that intends to use association funds to
6 distribute proxies, including the standard proxy form
7 referred to in paragraph (3), shall first post notice
8 of its intent to distribute proxies in prominent
9 locations within the project at least thirty days
10 prior to its distribution of proxies; provided that if
11 the board receives within seven days of the posted
12 notice a request by any owner for use of association
13 funds to solicit proxies accompanied by a statement,
14 the board shall mail to all owners either:

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



1 requested the use of association funds for
2 soliciting proxies and their statements.

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

6 (5) A director who has a conflict of interest on any issue
7 before the board shall disclose the nature of the
8 conflict of interest prior to a vote on that issue at
9 the board meeting, and the minutes of the meeting
10 shall record the fact that a disclosure was made;

11 (6) The apartment owners shall have the irrevocable right,
12 to be exercised by the board of directors, to have
13 access to each apartment from time to time during
14 reasonable hours as may be necessary for the operation
15 of the property or for making emergency repairs
16 therein necessary to prevent damage to the common
17 elements or to another apartment or apartments;

18 (7) An owner shall not act as an officer of an association
19 and an employee of the managing agent employed by the
20 association;



- 1 (8) An association's employees shall not engage in selling
2 or renting apartments in the condominium in which they
3 are employed except association-owned units, unless
4 such activity is approved by an affirmative vote of
5 sixty-five per cent of the membership;
- 6 (9) The board of directors shall meet at least once a
7 year. Whenever practicable, notice of all board
8 meetings shall be posted by the resident manager or a
9 member of the board in prominent locations within the
10 project seventy-two hours prior to the meeting or
11 simultaneously with notice to the board of directors;
- 12 (10) Directors shall not expend association funds for their
13 travel, directors' fees, and per diem, unless owners
14 are informed and a majority approve of these expenses;
- 15 (11) Associations at their own expense shall provide all
16 board members with a current copy of the association's
17 declaration, bylaws, house rules, and, annually, a
18 copy of this chapter with amendments;
- 19 (12) The directors may expend association funds, which
20 shall not be deemed to be compensation to the
21 directors, to educate and train themselves in subject



1 areas directly related to their duties and
2 responsibilities as directors; provided that the
3 approved annual operating budget shall include these
4 expenses as separate line items. These expenses may
5 include registration fees, books, videos, tapes, other
6 educational materials, and economy travel expenses.
7 Except for economy travel expenses within the State,
8 all other travel expenses incurred under this
9 subsection shall be subject to the requirements of
10 paragraph (10);

11 (13) A lien created pursuant to section 514A-90 may be
12 enforced by the association in any manner permitted by
13 law, including nonjudicial or power of sale
14 foreclosure procedures authorized by chapter 667; ~~and~~

15 (14) If the bylaws provide for cumulative voting by the
16 owners, the owners may so vote if an owner gives
17 notice of the owner's intent to cumulatively vote
18 before voting commences ~~[-]~~; and

19 (15) Votes of the board of directors shall be open and
20 shall not be held in executive session where not
21 inconsistent with the provisions of this chapter.



1 The provisions of this subsection shall be deemed incorporated
2 into the bylaws of all condominium projects existing as of
3 January 1, 1988, and all condominium projects created after that
4 date."

5 SECTION 2. Section 514A-95, Hawaii Revised Statutes, is
6 amended by amending subsection (a) to read as follows:

7 "(a) Every managing agent shall:

8 (1) Be licensed as a real estate broker in compliance with
9 chapter 467 and the rules of the commission or be a
10 corporation authorized to do business under article 8 of
11 chapter 412;

12 (2) Register with the commission prior to conducting
13 managing agent activity through approval of a completed
14 registration application, payment of fees, and
15 submission of any other additional information set forth
16 by the commission. The registration shall be for a
17 biennial period with termination on December 31 of an
18 even-numbered year. The commission shall prescribe a
19 deadline date prior to the termination date for the
20 submission of a completed reregistration application,
21 payment of fees, and any other additional information



1 set forth by the commission. Any managing agent who has
2 not met the submission requirements by the deadline date
3 shall be considered a new applicant for registration and
4 subject to initial registration requirements. The
5 information required to be submitted with any
6 application shall include the name, business address,
7 phone number, and names of association of apartment
8 owners managed;

- 9 (3) Obtain and keep current a fidelity bond in an amount
10 equal to \$500 multiplied by the aggregate number of
11 apartments of the association of apartment owners
12 managed by the managing agent; provided that the amount
13 of the fidelity bond shall not be less than \$20,000 nor
14 greater than \$100,000. Upon request by the commission,
15 the managing agent shall provide evidence of a current
16 fidelity bond or a certification statement from an
17 insurance company authorized by the insurance division
18 of the department of commerce and consumer affairs
19 certifying that the fidelity bond is in effect and meets
20 the requirement of this section and the rules adopted by
21 the commission. The managing agent shall permit only



1 employees covered by the fidelity bond to handle or have
2 custody or control of any association of apartment
3 owners funds, except any principals of the managing
4 agent that cannot be covered by the fidelity bond. The
5 fidelity bond shall protect the managing agent against
6 the loss of any association of apartment owners' moneys,
7 securities, or other properties caused by the fraudulent
8 or dishonest acts of employees of the managing agent.
9 Failure to obtain or maintain a fidelity bond in
10 compliance with this chapter and the rules adopted
11 pursuant thereto, including failure to provide evidence
12 of the fidelity bond coverage in a timely manner to the
13 commission, shall result in non-registration or the
14 automatic termination of the registration, unless an
15 approved exemption or a bond alternative is presently
16 maintained. A managing agent who is unable to obtain a
17 fidelity bond may seek an exemption from the fidelity
18 bond requirement from the commission. The commission
19 shall adopt rules establishing the conditions and terms
20 by which it may grant an exemption or a bond
21 alternative, or permit deductibles;



1 (4) Act promptly and diligently to recover from the fidelity
2 bond, if the fraud or dishonesty of the managing agent's
3 employees causes a loss to an association of apartment
4 owners, and apply the fidelity bond proceeds, if any, to
5 reduce the association of apartment owners' loss. If
6 more than one association of apartment owners suffers a
7 loss, the managing agent shall divide the proceeds among
8 the associations of apartment owners in proportion to
9 each association of apartment owners' loss. An
10 association of apartment owners may request a court
11 order requiring the managing agent to act promptly and
12 diligently to recover from the fidelity bond. If an
13 association of apartment owners cannot recover its loss
14 from the fidelity bond proceeds of the managing agent,
15 the association of apartment owners may recover by court
16 order from the real estate recovery fund established
17 under section 467-16; provided that:

18 (A) The loss is caused by the fraud,
19 misrepresentation, or deceit of the managing
20 agent or its employees;



- 1 (B) The managing agent is a licensed real estate
- 2 broker; and
- 3 (C) The association of apartment owners fulfills the
- 4 requirements of sections 467-16 and 467-18 and
- 5 any applicable rules of the commission;
- 6 (5) Pay a nonrefundable application fee and, upon approval,
- 7 an initial registration fee, and subsequently pay a
- 8 reregistration fee, as prescribed by rules adopted by
- 9 the director of commerce and consumer affairs pursuant
- 10 to chapter 91. A compliance resolution fee shall also
- 11 be paid pursuant to section 26-9(o) and the rules
- 12 adopted pursuant thereto; [~~and~~]
- 13 (6) Report immediately in writing to the commission any
- 14 changes to the information contained on the registration
- 15 application or any other documents provided for
- 16 registration. Failure to do so may result in
- 17 termination of registration and subject the managing
- 18 agent to initial registration requirements[-]; and
- 19 (7) Require every employee of a managing agent whose primary
- 20 responsibility includes direct interaction with the
- 21 association of apartment owners to be licensed in



1 accordance with requirements established by the
2 commission."

3 SECTION 3. Section 514B-107, Hawaii Revised Statutes, is
4 amended by amending subsection (a) to read as follows:

5 "(a) Members of the board shall be unit owners or co-
6 owners, vendees under an agreement of sale, a trustee of a trust
7 which owns a unit, or an officer, partner, member, or other
8 person authorized to act on behalf of any other legal entity
9 which owns a unit. There shall not be more than one
10 representative on the board from any one unit. Each member of
11 the board shall also be required to receive eight hours of
12 condominium law education annually from the commission."

13 SECTION 4. Section 514B-121, Hawaii Revised Statutes, is
14 amended to read as follows:

15 "**§514B-121 Association meetings.** (a) A meeting of the
16 association shall be held at least once each year.

17 (b) Special meetings of the association may be called by
18 the president, a majority of the board, or by a petition to the
19 secretary or managing agent signed by not less than twenty-five
20 per cent of the unit owners as shown in the association's record
21 of ownership; provided that if the secretary or managing agent



1 fails to send out the notices for the special meeting within
2 fourteen days of receipt of the petition, the petitioners shall
3 have the authority to set the time, date, and place for the
4 special meeting and to send out the notices and proxies for the
5 special meeting at the association's expense in accordance with
6 the requirements of the bylaws and of this part; provided
7 further that a special meeting based upon a petition to the
8 secretary or managing agent shall be set no later than sixty
9 days from receipt of the petition.

10 (c) Not less than fourteen days in advance of any meeting,
11 the secretary or other officer specified in the bylaws shall
12 cause notice to be:

- 13 (1) Hand-delivered;
- 14 (2) Sent prepaid by United States mail to the mailing
15 address of each unit or to any other mailing address
16 designated in writing by the unit owner; or
- 17 (3) At the option of the unit owner, expressed in writing,
18 by electronic mail to the electronic mailing address
19 designated in writing by the unit owner.

20 The notice of any meeting must state the date, time, and place
21 of the meeting and the items on the agenda, including the



1 general nature and rationale of any proposed amendment to the
2 declaration or bylaws, and any proposal to remove a member of
3 the board; provided that this subsection shall not preclude any
4 unit owner from proposing an amendment to the declaration or
5 bylaws or to remove a member of the board at any annual
6 association meeting.

7 (d) All association meetings shall be conducted in
8 accordance with the most recent edition of Robert's Rules of
9 Order Newly Revised. If so provided in the declaration or
10 bylaws, meetings may be conducted by any means that allow
11 participation by all unit owners in any deliberation or
12 discussion.

13 (e) All association meetings shall be held at the address
14 of the condominium or elsewhere within the State as determined
15 by the board; provided that in the event of a natural disaster,
16 such as a hurricane, an association meeting may be held outside
17 the State.

18 (f) All votes taken at an association meeting shall be
19 open and shall not occur in executive session where not
20 inconsistent with the provisions of this chapter."



1 SECTION 5. Section 514B-161, Hawaii Revised Statutes, is
2 amended by amending subsection (a) to read as follows:

3 "(a) If an apartment owner or the board of directors
4 requests mediation of a dispute involving the interpretation or
5 enforcement of the association of apartment owners' declaration,
6 bylaws, or house rules, the other party in the dispute shall be
7 required to participate in mediation. Each party shall be
8 wholly responsible for its own costs of participating in
9 mediation, unless both parties agree that one party shall pay
10 all or a specified portion of the mediation costs. If a party
11 refuses to participate in the mediation of a particular dispute,
12 a court [~~may take this refusal into consideration when~~] shall
13 issue a judgment against the party refusing to participate in
14 mediation, including awarding expenses, costs, and attorneys'
15 fees."

16 SECTION 6. This Act does not affect rights and duties that
17 matured, penalties that were incurred, and proceedings that were
18 begun before its effective date.

19 SECTION 7. Statutory material to be repealed is bracketed
20 and stricken. New statutory material is underscored.

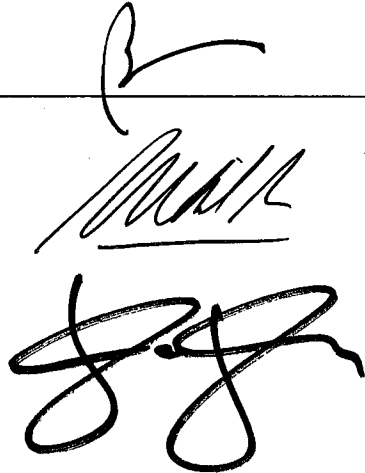


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1 SECTION 8. This Act shall take effect upon its approval.

2

INTRODUCED BY: _____



The image shows three handwritten signatures stacked vertically, positioned to the right of the 'INTRODUCED BY:' text and a horizontal line. The top signature is a simple, stylized mark. The middle signature is more complex, appearing to be 'Mull' or similar. The bottom signature is the most elaborate, with large loops and flourishes.



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Report Title:

Condominiums; Associations; Boards; Mediation; Licensing;
Educational Requirements

Description:

Establishes open voting and educational requirements for condominium association and board members. Requires courts to issue a judgment against a party refusing to participate in the mediation process. Requires certain employees of a managing agent to be licensed in accordance with requirements established by the real estate commission.

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

