
A BILL FOR AN ACT

RELATING TO CONDOMINIUMS.

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

1 SECTION 1. The legislature finds that the board of
2 directors of each association of apartment owners has broad
3 powers that impact its members, such as adopting and amending
4 budgets for revenues, expenditures, and reserves; hiring and
5 discharging management agents and other independent contractors,
6 agents, and employees; instituting, defending, or intervening in
7 litigation or administrative proceedings affecting the
8 condominium; regulating the use, maintenance, repair,
9 replacement, and modification of common elements; imposing and
10 receiving payments, fees, or charges for the use, rental, or
11 operation of the common elements; imposing charges and
12 penalties, including late fees and interest, for late payment of
13 assessments; and levying fines for violations of the
14 association's declaration, bylaws, and rules and regulations.

15 The legislature further finds that the boards of directors
16 of associations of apartment owners represent the homeowners in
17 managing a condominium, but the homeowners are vested with the



1 ultimate decision-making power. Clarifying board member
2 responsibilities regarding board meetings and the nature and
3 process of an owner's participation in deliberations or
4 discussions of a board will help foster accountability and
5 transparency for owners and board members in a condominium
6 association.

7 The purpose of this Act is to:

8 (1) Clarify that any violation of a mandatory provision of
9 the State's condominium law by a condominium board of
10 directors or its officers and members is a per se
11 violation of the board's fiduciary duty, but provide a
12 safe harbor provision for a board member who votes for
13 compliance during a board meeting;

14 (2) Balance the right of association members to speak and
15 participate in deliberations and discussions of a
16 board, while ensuring that a board is able to complete
17 its agenda in a timely manner;

18 (3) Require the notice for board meetings to include a
19 list of items expected to be on the meeting agenda;
20 and



1 (4) Require unapproved final drafts of the minutes of a
2 board meeting to be available within fourteen days
3 after the meeting.

4 SECTION 2. Section 514B-106, Hawaii Revised Statutes, is
5 amended by amending subsection (a) to read as follows:

6 "(a) Except as provided in the declaration, the bylaws,
7 subsection (b), or other provisions of this chapter, the board
8 may act in all instances on behalf of the association. In the
9 performance of their duties, officers and members of the board
10 shall owe the association a fiduciary duty and exercise the
11 degree of care and loyalty required of an officer or director of
12 a corporation organized under chapter 414D. Any violation of
13 this chapter by a board or its officers and members shall be
14 deemed a per se violation of the fiduciary duty owed to the
15 association; provided that a board member may avoid liability by
16 voting against, the board action that is in violation of this
17 chapter and creating a written record of disagreement by having
18 that board member's vote recorded in the minutes of the regular
19 or special meeting within forty-five days of the occurrence of
20 the violation."



1 SECTION 3. Section 514B-125, Hawaii Revised Statutes, is
2 amended to read as follows:

3 " ~~[+] §514B-125 [.]~~ **Board meetings.** (a) All meetings of the
4 board, other than executive sessions, shall be open to all
5 members of the association, and association members who are not
6 on the board ~~[may]~~ shall be permitted to participate in any
7 deliberation or discussion, other than executive sessions,
8 ~~[unless a majority of a quorum of the board votes otherwise.]~~
9 pursuant to owner participation rules adopted by the board.

10 (b) Following any election of board members by the
11 association, the board may, at the board's next regular meeting
12 or at a duly noticed special meeting, establish rules for owner
13 participation in any deliberation or discussion at board
14 meetings, other than executive sessions. A board that
15 establishes such rules pursuant to this subsection:

- 16 (1) Shall notify all owners of these rules; and
- 17 (2) May amend these rules at any regular or duly noticed
18 special meeting of the association; provided that all
19 owners shall be notified of any adopted amendments.

20 ~~[(b)]~~ (c) The board, ~~[with the approval of a majority of a~~
21 ~~quorum of its members,]~~ by majority vote, may adjourn a meeting



1 and reconvene in executive session to discuss and vote upon
2 matters:

- 3 (1) Concerning personnel;
- 4 (2) Concerning litigation in which the association is or
5 may become involved;
- 6 (3) Necessary to protect the attorney-client privilege of
7 the association; or
- 8 (4) Necessary to protect the interests of the association
9 while negotiating contracts, leases, and other
10 commercial transactions.

11 The general nature of any business to be considered in executive
12 session shall first be announced in open session.

13 [~~e~~] (d) All board meetings shall be conducted in
14 accordance with the most recent edition of Robert's Rules of
15 Order Newly Revised. Unless otherwise provided in the
16 declaration or bylaws, a board may permit any meeting to be
17 conducted by any means of communication through which all
18 directors participating may simultaneously hear each other
19 during the meeting. A director participating in a meeting by
20 this means is deemed to be present in person at the meeting. If
21 permitted by the board, any unit owner may participate in a



1 meeting conducted by a means of communication through which all
2 participants may simultaneously hear each other during the
3 meeting, provided that the board may require that the unit owner
4 pay for the costs associated with the participation.

5 ~~[(d)]~~ (e) The board shall meet at least once a year.
6 Notice of all board meetings shall be posted by the managing
7 agent, resident manager, or a member of the board, in prominent
8 locations within the project seventy-two hours prior to the
9 meeting or simultaneously with notice to the board. The notice
10 shall include a list of business items expected to be on the
11 meeting agenda.

12 ~~[(e)]~~ (f) A director shall not vote by proxy at board
13 meetings.

14 ~~[(f)]~~ (g) A director shall not vote at any board meeting
15 on any issue in which the director has a conflict of interest.
16 A director who has a conflict of interest on any issue before
17 the board shall disclose the nature of the conflict of interest
18 prior to a vote on that issue at the board meeting, and the
19 minutes of the meeting shall record the fact that a disclosure
20 was made.



1 "Conflict of interest", as used in this subsection, means
2 an issue in which a director has a direct personal or pecuniary
3 interest not common to other members of the association."

4 SECTION 4. Section 514B-126, Hawaii Revised Statutes, is
5 amended by amending subsection (c) to read as follows:

6 "(c) Minutes of all meetings of the board shall be
7 available within seven calendar days after approval, and
8 unapproved final drafts of the minutes of a meeting shall be
9 available within [~~sixty~~] fourteen days after the meeting;
10 provided that the minutes of any executive session may be
11 withheld if their publication would defeat the lawful purpose of
12 the executive session."

13 SECTION 5. Statutory material to be repealed is bracketed
14 and stricken. New statutory material is underscored.

15 SECTION 6. This Act shall take effect on July 1, 2059.



Report Title:

Condominiums; Condominium Association Members; Board Members;
Board Meetings; Notice

Description:

Makes violation of a mandatory provision of the State's condominium law by a condominium board of directors or its officers and members a per se violation of the board's fiduciary duty, but provides a safe harbor from liability for a board member who votes against the action that constitutes a violation. Authorizes board to adopt rules for owner participation in deliberations and discussions of the board and requires notification to owners of the rules. Requires the notice for board meetings to include a list of items expected to be on the meeting agenda. Requires unapproved final drafts of the board minutes to be available within fourteen days after the meeting. (SB627 HD1)

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