

From: mailinglist@capitol.hawaii.gov
Sent: Sunday, March 26, 2017 7:09 PM
To: CPCtestimony
Cc: richard.emery@associa.us
Subject: Submitted testimony for SB392 on Mar 28, 2017 14:00PM

SB392

Submitted on: 3/26/2017

Testimony for CPC on Mar 28, 2017 14:00PM in Conference Room 329

| Submitted By | Organization | Testifier Position | Present at Hearing |
|---------------------|---------------------|---------------------------|---------------------------|
| Richard Emery | Associa | Support | Yes |

Comments: Please pass out un-amended.

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From: mailinglist@capitol.hawaii.gov
Sent: Sunday, March 26, 2017 7:56 PM
To: CPCtestimony
Cc: steveghi@gmail.com
Subject: Submitted testimony for SB392 on Mar 28, 2017 14:00PM

SB392

Submitted on: 3/26/2017

Testimony for CPC on Mar 28, 2017 14:00PM in Conference Room 329

| Submitted By | Organization | Testifier Position | Present at Hearing |
|---------------------|--|---------------------------|---------------------------|
| Steve Glanstein | Hawaii State Association of Parliamentarians | Support | No |

Comments: Comments: This bill clarifies that the selection of multiple proxy check boxes or no check boxes makes the proxy into a quorum only proxy. It also clarifies the audit requirement. Please pass this bill as is.

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From: mailinglist@capitol.hawaii.gov
Sent: Saturday, March 25, 2017 1:14 AM
To: CPCtestimony
Cc: jsugimura@bendetfidell.com
Subject: Submitted testimony for SB392 on Mar 28, 2017 14:00PM

SB392

Submitted on: 3/25/2017

Testimony for CPC on Mar 28, 2017 14:00PM in Conference Room 329

| Submitted By | Organization | Testifier Position | Present at Hearing |
|---------------------|---------------------------------------|---------------------------|---------------------------|
| Jane Sugimura | HI Council of Assoc. of Apt. Owners a | Support | No |

Comments: Please pass out unamended

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HUI MALAMA O HALE

c/o Alice Clay

1314 Kalakaua Ave #1204

Honolulu, Hawaii 96826

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March 26, 2017

Senator Rosalyn H. Baker, Chair

Senator Clarence K. Nishimura, Vice-Chair

COMMITTEE ON COMMERCE, CONSUMER PROTECTION & HEALTH

Re: Testimony in Support of

SB392 SD1 HD1 Relating to Condominiums

Hearing: Tuesday, March 28, 2017

Aloha mai kakou Senator Baker, Senator Nishimura and Committee Members:

For years, our Board of Directors have not been following our condominium document under 514B -123 which I have attached that portion regarding 514B -123 (d) (3) which reads:

(d) A proxy, to be valid, shall:

(3) If it is a standard proxy form authorized by the association, contain boxes wherein the owner has indicated that the proxy is given:

(A) For quorum purposes only;

(B) To the individual whose name is printed on a line next to this box;

(C) To the board as a whole and that the vote is to be made on the basis of the preference of the majority of the directors present at the meeting; or

(D) To those directors present at the meeting with the vote to be shared with each director receiving an equal percentage.

The proxy form shall also contain a box wherein the owner may indicate that the owner wishes to obtain a copy of the annual audit report required by section 514B-150.

In addition to not only following this format, the BOD added language to our proxy for years as a note reading:

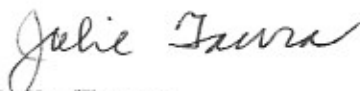
Please check only one of the following boxes.. If no proxy holder is designated, or if no box is checked, or if more than one box is checked, the proxy shall be given to the Board of Directors as a whole. Flawed proxies were given to the BOD to vote themselves back on the Board. Flawed proxies can only be used for quorum purposes.

Please pass SB392 SD1 HD1 to make our BOD follow 514B-123 (d) (3).

Mahalo nui loa,



Alice Clay
Owner, Apt. 1204



Julie Taura
Owner, Apt., 601

Attachments: copy of 514B-123 pages ^{or} ~~54~~ & ^{or} ~~55~~ from our condominium documents, and, copies of Proxy from 2015 and 2016 for your review.

- (3) At the option of the unit owner, expressed in writing, by electronic mail to the electronic mailing address designated in writing by the unit owner.

The notice of any meeting must state the date, time, and place of the meeting and the items on the agenda, including the general nature and rationale of any proposed amendment to the declaration or bylaws, and any proposal to remove a member of the board; provided that this subsection shall not preclude any unit owner from proposing an amendment to the declaration or bylaws or to remove a member of the board at any annual association meeting.

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

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

[§514B-122] Association meetings; minutes. (a) Minutes of meetings of the association shall be approved at the next succeeding regular meeting or by the board, within sixty days after the meeting, if authorized by the owners at an annual meeting. If approved by the board, owners shall be given a copy of the approved minutes or notified of the availability of the minutes within thirty days after approval.

(b) Minutes of all meetings of the association shall be available within seven calendar days after approval, and unapproved final drafts of the minutes of a meeting shall be available within sixty days after the meeting.

(c) An owner shall be allowed to offer corrections to the minutes at an association meeting.

[§514B-123] Association meetings; voting; proxies. (a) If only one of several owners of a unit is present at a meeting of the association, that owner is entitled to cast all the votes allocated to that unit. If more than one of the owners is present, the votes allocated to that unit may be cast only in accordance with the agreement of a majority in interest of the owners, unless the declaration or bylaws expressly provide otherwise. There is majority agreement if any one of the owners casts the votes allocated to that unit without protest being made by any of the other owners of the unit to the person presiding over the meeting before the polls are closed.

(b) Votes allocated to a unit may be cast pursuant to a proxy duly executed by a unit owner. A unit owner may vote by mail or electronic transmission through a duly executed proxy. If a unit is owned by more than one person, each owner of the unit may vote or register protest to the casting of votes by the other owners of the unit through a duly executed proxy. In the absence of protest, any owner may cast the votes allocated to the unit by proxy. A unit owner may revoke a proxy given pursuant to this section only by actual notice of revocation to the secretary of the association or the managing agent. A proxy is void if it purports to be revocable without notice.

(c) No votes allocated to a unit owned by the association may be cast for the election or reelection of directors.

(d) A proxy, to be valid, shall:

- (1) Be delivered to the secretary of the association or the managing agent, if any, no later than 4:30 p.m. on the second business day prior to the date of the meeting to which it pertains;
- (2) Contain at least the name of the association, the date of the meeting of the association, the printed names and signatures of the persons giving the proxy, the unit numbers for which the proxy is given, the names of persons to whom the proxy is given, and the date that the proxy is given; and
- (3) If it is a standard proxy form authorized by the association, contain boxes wherein the owner has indicated that the proxy is given:
 - (A) For quorum purposes only;
 - (B) To the individual whose name is printed on a line next to this box;
 - (C) To the board as a whole and that the vote is to be made on the basis of the preference of the majority of the directors present at the meeting; or
 - (D) To those directors present at the meeting with the vote to be shared with each director receiving an equal percentage.

The proxy form shall also contain a box wherein the owner may indicate that the owner wishes to obtain a copy of the annual audit report required by section 514B-150.

(e) A proxy shall only be valid for the meeting to which the proxy pertains and its adjournments, may designate any person as proxy, and may be limited as the unit owner desires and indicates; provided that no proxy shall be irrevocable unless coupled with a financial interest in the unit.

(f) A copy, facsimile telecommunication, or other reliable reproduction of a proxy may be used in lieu of the original proxy for any and all purposes for which the original proxy could be used; provided that any copy, facsimile telecommunication, or other reproduction shall be a complete reproduction of the entire original proxy.

(g) Nothing in this section shall affect the holder of any proxy under a first mortgage of record encumbering a unit or under an agreement of sale affecting a unit.

(h) With respect to the use of association funds to distribute proxies:

(1) Any board that intends to use association funds to distribute proxies, including the standard proxy form referred to in subsection (d)(3), shall first post notice of its intent to distribute proxies in prominent locations within the project at least twenty-one days before its distribution of proxies. If the board receives within seven days of the posted notice a request by any owner for use of association funds to solicit proxies accompanied by a statement, the board shall mail to all owners either:

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

ONE KALAKAUA SENIOR LIVING ASSOCIATION

PROXY

Note: Please check only one of the following boxes. If no proxy holder is designated, or if no box is checked, or if more than one box is checked, the proxy shall be given to the Board of Directors as a whole. If you are not present at the meeting, this proxy designates your proxy holder as your substitute for any proxies assigned to you unless you designate another substitute in writing subsequent to this proxy.

The undersigned, being the owner(s) of the apartment(s) shown below, does hereby constitute and appoint

- The Board as a whole, to be voted on the basis of the preference of a majority of the Directors present at the meeting, or
- The Directors present at the meeting and the vote to be shared with each Director receiving an equal percentage, or
- _____ The individual whose name is printed on this line (to be used for quorum if absent and if the individual has not assigned his proxy)

as the undersigned's attorney and agent, with full power of substitution, to act in the undersigned's name, place, and stead, and to vote the undersigned's proxy at the March 25, 2015 Annual Association meeting to be held Onsite at 2:00 p.m. (registration begins at 1:15 p.m.), and at any and all adjournments thereof, for the transaction of any and all business that may properly come before the meeting, including the election or re-election of directors, according to the proportional interest in the common elements that the undersigned would be entitled to vote if then personally present, hereby revoking any proxy or proxies heretofore given, and ratifying and confirming all that said attorney and agent may do by virtue hereof, or

For quorum purposes only.

This proxy is valid only for the meeting cited above and any and all adjournments thereof. If I/we attend the meeting in person, I/we may request a ballot to vote in person thereby voiding this proxy (if not previously exercised). Receipt of notice of said meeting is hereby acknowledged.

PRINTED NAME(S) OF OWNER(S) [REQUIRED BY LAW]:

SIGNATURE(S) OF OWNER(S) [REQUIRED BY LAW]:

UNIT NO(S) [REQUIRED BY LAW]

DATE SIGNED: [REQUIRED BY LAW] Do not post date.

Sign and print your name as it appears in the Association's records, and provide your unit number(s) and the date. Persons signing in a representative capacity (personal representatives, executors, administrators, trustees, guardians, conservators, partners, members of a member-managed LLC, managers of a manager-managed LLC, and corporate officers) are to add their titles and, if requested, are to submit evidence of their authority to act in that capacity.

For this proxy to be valid, the proxy must be received by the Association's Managing Agent or Secretary no later than 4:30 p.m., on March 23, 2015. Proxies may be faxed to (808) 593-6333.

IF NOT PROVIDED PRIOR TO OR TOGETHER WITH THE NOTICE OF MEETING, I WISH TO OBTAIN A COPY OF THE ANNUAL AUDIT REPORT IF ACCOMPLISHED.

Date Received _____ by Managing Agent/Board Secretary

ONE KALAKAUA SENIOR LIVING ASSOCIATION

PROXY

Note: Please check **only one** of the following boxes. If no proxy holder is designated, or if no box is checked, or if more than one box is checked, the proxy shall be given to the Board of Directors as a whole. If you are not present at the meeting, this proxy designates your proxy holder as your substitute for any proxies assigned to you unless you designate another substitute in writing subsequent to this proxy.

The undersigned, being the owner(s) of the apartment(s) shown below, does hereby constitute and appoint

- The Board as a whole, to be voted on the basis of the preference of a majority of the Directors present at the meeting, or
- The Directors present at the meeting and the vote to be shared with each Director receiving an equal percentage, or
- _____ The individual whose name is printed on this line (to be used for quorum if absent and if the individual has not assigned his proxy)

as the undersigned's attorney and agent, with full power of substitution, to act in the undersigned's name, place, and stead, and to vote the undersigned's proxy at the March 23, 2016 Annual Association meeting to be held Onsite at 2:00 p.m. (registration begins at 1:15 p.m.), and at any and all adjournments thereof, for the transaction of any and all business that may properly come before the meeting, including the election or re-election of directors, according to the proportional interest in the common elements that the undersigned would be entitled to vote if then personally present, hereby revoking any proxy or proxies heretofore given, and ratifying and confirming all that said attorney and agent may do by virtue hereof, or

- For quorum purposes only.

This proxy is valid only for the meeting cited above and any and all adjournments thereof. If I/we attend the meeting in person, I/we may request a ballot to vote in person thereby voiding this proxy (if not previously exercised). Receipt of notice of said meeting is hereby acknowledged.

PRINTED NAME(S) OF OWNER(S) [REQUIRED BY LAW]:

SIGNATURE(S) OF OWNER(S) [REQUIRED BY LAW]:

UNIT NO(S) _____
[REQUIRED BY LAW]

DATE SIGNED: _____
[REQUIRED BY LAW] Do not post date.

Sign and print your name as it appears in the Association's records, and provide your unit number(s) and the date. Persons signing in a representative capacity (personal representatives, executors, administrators, trustees, guardians, conservators, partners, members of a member-managed LLC, managers of a manager-managed LLC, and corporate officers) are to add their titles and, if requested, are to submit evidence of their authority to act in that capacity.

For this proxy to be valid, the proxy must be received by the Association's Managing Agent or Secretary no later than 4:30 p.m., on March 21, 2016. Proxies may be faxed to (808) 593-6333.

- IF NOT PROVIDED PRIOR TO OR TOGETHER WITH THE NOTICE OF MEETING, I WISH TO OBTAIN A COPY OF THE ANNUAL AUDIT REPORT IF ACCOMPLISHED.

Date Received _____ by Managing Agent/Board Secretary

From: mailinglist@capitol.hawaii.gov
Sent: Saturday, March 25, 2017 2:04 PM
To: CPCtestimony
Cc: lila.mower@gmail.com
Subject: Submitted testimony for SB392 on Mar 28, 2017 14:00PM

SB392

Submitted on: 3/25/2017

Testimony for CPC on Mar 28, 2017 14:00PM in Conference Room 329

| Submitted By | Organization | Testifier Position | Present at Hearing |
|---------------------|---------------------|---------------------------|---------------------------|
| Lila Mower | Hui `Oia`i`o | Support | No |

Comments: This bill is preferred rather than HB239 HD2. Many studies document that the primacy of position gives preference to the first choice. Thus, please add that the standard association authorized proxy form should enumerate the four choices in the same order as listed in HRS514B-123(3):(A) For quorum purposes only; (B) To the individual whose name is printed on a line next to this box; (C) To the board as a whole and that the vote is to be made on the basis of the preference of the majority of the directors present at the meeting; or (D) To those directors present at the meeting with the vote to be shared with each director receiving an equal percentage. Most association authorized proxies currently list the four choices in the reverse order, giving preference of proxy assignment to directors. Mahalo.

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From: mailinglist@capitol.hawaii.gov
Sent: Sunday, March 26, 2017 8:50 AM
To: CPCtestimony
Cc: aanderson@alf-hawaii.com
Subject: Submitted testimony for SB392 on Mar 28, 2017 14:00PM

SB392

Submitted on: 3/26/2017

Testimony for CPC on Mar 28, 2017 14:00PM in Conference Room 329

| Submitted By | Organization | Testifier Position | Present at Hearing |
|---------------------|---------------------|---------------------------|---------------------------|
| Anne Anderson | Individual | Support | Yes |

Comments: This bill clarifies that if no box or more than one box is checked on a proxy, exclusive of the audit box, it shall be used for quorum purposes only. Please pass this bill as is. Sincerely, Anne Anderson

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From: mailinglist@capitol.hawaii.gov
Sent: Saturday, March 25, 2017 2:18 PM
To: CPCtestimony
Cc: launahele@yahoo.com
Subject: *Submitted testimony for SB392 on Mar 28, 2017 14:00PM*

SB392

Submitted on: 3/25/2017

Testimony for CPC on Mar 28, 2017 14:00PM in Conference Room 329

| Submitted By | Organization | Testifier Position | Present at Hearing |
|---------------------|---------------------|---------------------------|---------------------------|
| Benton | Individual | Support | No |

Comments:

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TESTIMONY IN SUPPORT WITH AMENDMENT
SB392, SB1, HD1, RELATING TO CONDOMINIUMS

Support SB392, SB1, HD1, and thank Senator Baker and her committee for preserving the rights of homeowners to develop and use their own proxy form as an alternative to the Association Standard Proxy Form.

However, wish to **recommend that HRS 514B-123(e) be further amended to require that the Standard proxy form list the options available to homeowners in the same sequence as listed in HRS 514B-123(e).** Several Associations reverse the sequence, listing the options favoring the Association Board of Directors first. This may seem to be a minor matter for some, but to homeowners, it is not. Listing the options in the order given in HRS 514B-123(e) places homeowners in a more favorable position for obtaining proxies, than the Board of Directors who tend to re-elect themselves.

Thus, recommend the words “listing in the following order” be added to HRS 514B-123(e)(1) as follows: (1) The proxy shall contain boxes listed in the following order wherein the owner [~~has indicated~~] may indicate that the proxy is given:

514B-123

(e) If [~~it~~] a proxy is a standard proxy form authorized by the association, the proxy shall comply with the following additional requirements:

(1) The proxy shall contain boxes listed in the following order wherein the owner [~~has indicated~~] may indicate that the proxy is given:

- (A) For quorum purposes only;
- (B) To the individual whose name is printed on a line next to this box;
- (C) To the board as a whole and that the vote is to be made on the basis of the preference of the majority of the directors present at the meeting; or
- (D) To those directors present at the meeting with the vote to be shared with each director receiving an equal percentage[-];

Richard J. Port
1600 Ala Moana Blvd. #3100
Honolulu, Hawaii 96815
Tel 808-941-9624
e-mail: portr001@hawaii.rr.com

Measure: SB 392, SD 1, HD 1 Relating to Condominiums
Date and Time of Hearing: 2:00 p.m. Tuesday, March 28, 2017
Committee: The Committee on Consumer Protection & Commerce

Aloha Representative Takumi and Members of your Committee,

Thank you for this opportunity to present my testimony in support of SB 392 SD1, HD1.

This bill clarifies the manner in which a Proxy form can be used for a Condominium Association meeting if the form has been given to two separate individuals or entities, or if the form fails to indicate to whom the Proxy form is being assigned.

In both cases, SB 392, SD1, HD 1 indicates that the defective Proxy form can only be used by the association for quorum purposes.

I appreciate the opportunity to testify in support of SB 392 SD1, HD1 and I request that your committee approve this bill unamended.

Richard Port