

JAN 19 2018

A BILL FOR AN ACT

RELATING TO CONDOMINIUMS.

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

1 SECTION 1. Section 514A-3, Hawaii Revised Statutes, is
2 amended as follows:

3 1. By amending the definition of "common elements" to
4 read:

5 "\"Common elements\", unless otherwise provided in the
6 declaration, means and includes:

7 (1) The land included in the condominium property regime,
8 whether leased or in fee simple;

9 (2) The foundations, columns, girders, beams, supports,
10 main walls, roofs, halls, corridors, lobbies, stairs,
11 stairways, fire escapes, and entrances and exits of
12 the building or buildings;

13 (3) The basements, flat roofs, yards, gardens,
14 recreational facilities, parking areas, and storage
15 spaces;



(4) The premises for the lodging or use of janitors and other persons employed for the operation of the property;

(5) Central and appurtenant installations for services such as power, light, gas, hot and cold water, heating, refrigeration, air conditioning, and incinerators;

(6) The elevators, escalators, tanks, pumps, motors, fans, compressors, ducts, and in general all apparatus and installations existing for common use;

(7) Such facilities as may be designated as common elements in the declaration; and

(8) All other parts of the property necessary or convenient to its existence, maintenance, and safety, or normally in common use[-];

provided that the part of the property is used and benefits all apartment owners, their tenants, or visitors to the apartment owners or their tenants."

2. By amending the definition of "limited common elements" to read:



1 "~~Limited common elements~~" means and includes [~~those common~~
2 ~~elements designated in the declaration as reserved for the use of~~
3 ~~a certain apartment or certain apartments to the exclusion of the~~
4 ~~other apartments; provided that no amendment of the declaration~~
5 ~~affecting any of the limited common elements shall be effective~~
6 ~~without the consent of the owner or owners of the apartment or~~
7 ~~apartments for the use of which such limited common elements are~~
8 ~~reserved.]~~ those elements that are used and benefit only certain
9 apartment owners, their tenants, or visitors to those apartment
10 owners or their tenants."

11 SECTION 2. Section 514A-82.2, Hawaii Revised Statutes, is
12 amended to read as follows:

13 "**§514A-82.2 Restatement of declaration and bylaws.** (a)
14 Notwithstanding any other provision of this chapter or of any
15 other statute or instrument, an association of apartment owners
16 may at any time restate the declaration of condominium property
17 regime of the project or the bylaws of the association to set
18 forth all amendments thereof by a [~~resolution adopted by the board~~
19 ~~of directors.]~~ vote or written consent of the apartment owners;
20 provided that no vote or written consent shall be required for
21 amendments made pursuant to this chapter with regard to a



1 determination of the common elements and the limited common
2 elements.

3 (b) An association of apartment owners may at any time
4 restate the declaration of condominium property regime of the
5 project or the bylaws of the association to amend the declaration
6 or bylaws as may be required to conform with the provisions of
7 this chapter or of any other statute, ordinance, rule or
8 regulation enacted by any governmental authority, by a [~~resolution~~
9 ~~adopted by the board of directors, and the restated declaration or~~
10 ~~bylaws shall be as fully effective for all purposes as if adopted~~
11 ~~by the]~~ vote or written consent of the apartment owners; provided
12 that any declaration of condominium property regime or bylaws
13 restated pursuant to this subsection shall identify each portion
14 so restated and shall contain a statement that those portions have
15 been restated solely for purposes of information and convenience,
16 identifying the statute, ordinance, rule, or regulation
17 implemented by the amendment, and that in the event of any
18 conflict, the restated declaration or bylaws shall be subordinate
19 to the cited statute, ordinance, rule, or regulation.

20 (c) Upon the [~~adoption of a resolution]~~ vote or written
21 consent of the apartment owners pursuant to subsection (a) or (b),



1 the restated declaration of condominium property regime or bylaws
2 shall set forth all of the operative provisions of the declaration
3 of condominium property regime or bylaws, as amended, together
4 with a statement that the restated declaration of condominium
5 property regime or bylaws correctly sets forth without change the
6 corresponding provisions of the declaration of condominium
7 property regime or bylaws, as amended, and that the restated
8 declaration of condominium property regime or bylaws supersede the
9 original declaration of condominium property regime or bylaws and
10 all prior amendments thereto.

11 (d) The restated declaration of condominium property regime
12 or bylaws shall be recorded in the manner provided in section
13 514A-11, 514A-82, or both, and upon recordation shall supersede
14 the original declaration of condominium property regime or bylaws
15 and all prior amendments thereto; provided that in the event of
16 any conflict, the restated declaration of condominium property
17 regime or bylaws shall be subordinate to the original declaration
18 of condominium property regime or bylaws and all prior amendments
19 thereto[-], except with regard to a determination of the common
20 elements and the limited common elements."



SECTION 3. Section 514A-83.5, Hawaii Revised Statutes, is amended by amending subsections (c) and (d) to read as follows:

"(c) Financial statements, general ledgers, the accounts receivable ledger, accounts payable ledgers, check ledgers, insurance policies, contracts, and invoices of the association of apartment owners for the duration those records are kept by the association and delinquencies of ninety days or more shall be available for examination by apartment owners at convenient hours at a place designated by the board; provided that:

(1) The board may require owners to furnish to the association a one-time, duly executed and acknowledged affidavit stating that the information is requested in good faith for the protection of the interests of the association, or its members, or both; and

(2) Owners pay for administrative costs in excess of eight hours per year.

Copies of these items shall be provided to any owner upon the owner's request; provided that the owner pays a reasonable fee for duplication, postage, stationery, and other administrative costs associated with handling the request.



(d) Owners shall also be permitted to view proxies, tally sheets, ballots, owners' check-in lists, and the certificate of election for a period of thirty days following any association meeting; provided:

(1) That the board may require owners to furnish to the association a one-time, duly executed and acknowledged affidavit stating that the information is requested in good faith for the protection of the interest of the association or its members or both; and

(2) That owners pay for administrative costs in excess of eight hours per year.

Proxies and ballots may be destroyed following the thirty-day period. Copies of tally sheets, owners' check-in lists, and the certificates of election from the most recent association meeting shall be provided to any owner upon the owner's request; provided that the owner pay a reasonable fee for duplicating, postage, stationery, and other administrative costs associated with handling the request."

SECTION 4. Section 514B-3, Hawaii Revised Statutes, is amended as follows:



1 1. By amending the definition of "common elements" to
2 read:

3 "Common elements" means:

4 (1) All portions of a condominium other than the units;
5 and

6 (2) Any other interests in real estate for the benefit of
7 unit owners that are subject to the declaration[-];
8 provided that the part of the property is used and benefits all
9 unit owners, their tenants, or visitors to the unit owners or
10 their tenants."

11 2. By amending the definition of "limited common element"
12 to read:

13 "Limited common element" means ~~[a portion of the common~~
14 ~~elements designated by the declaration or by operation of~~
15 ~~section 514B-35 for the exclusive use of one or more but fewer~~
16 ~~than all of the units.]~~ those elements that are used and benefit
17 only certain unit owners, their tenants, or visitors to those unit
18 owners or their tenants."

19 SECTION 5. Section 514B-109, Hawaii Revised Statutes, is
20 amended to read as follows:



1 "§514B-109 Restatement of declaration and bylaws. (a)

2 Notwithstanding any other provision of this chapter or of any
3 other statute or instrument, an association at any time may
4 restate the declaration or bylaws of the association to set
5 forth all amendments thereto by a ~~[resolution adopted by the~~
6 ~~board.]~~ vote or written consent of the unit owners; provided that
7 no vote or written consent shall be required for amendments made
8 pursuant to this chapter with regard to a determination of the
9 common elements and the limited common elements.

10 (b) Subject to section 514B-23, an association at any time
11 may restate the declaration or bylaws of the association to
12 amend the declaration or bylaws as may be required in order to
13 conform with the provisions of this chapter or of any other
14 statute, ordinance, or rule enacted by any governmental
15 authority, or to correct the percentage of common interest for
16 the project so it totals one hundred per cent, by a ~~[resolution~~
17 ~~adopted by the board.]~~ vote or written consent of the unit
18 owners. If the restated declaration is to correct the
19 percentage of common interest for the project so that it totals
20 one hundred per cent, the proportion of each unit owner's
21 percentage of common interest shall remain the same in relation



1 to the other unit owners. [~~The restated declaration or bylaws~~
2 ~~shall be as fully effective for all purposes as if adopted by a~~
3 ~~vote or written consent of the unit owners.~~]

4 Any declaration or bylaws restated pursuant to this
5 subsection shall:

6 (1) Identify each portion so restated;

7 (2) Contain a statement that those portions have been
8 restated solely for purposes of information and
9 convenience;

10 (3) Identify the statute, ordinance, or rule implemented
11 by the amendment; and

12 (4) Contain a statement that, in the event of any
13 conflict, the restated declaration or bylaws shall be
14 subordinate to the cited statute, ordinance, or rule.

15 (c) Upon the [~~adoption of a resolution~~] vote or written
16 consent of the unit owners pursuant to subsection (a) or (b), the
17 restated declaration or bylaws shall set forth all of the
18 operative provisions of the declaration or bylaws, as amended,
19 together with a statement that the restated declaration or
20 bylaws correctly sets forth without change the corresponding
21 provisions of the declaration or bylaws, as amended, and that



1 the restated declaration or bylaws supersede the original
2 declaration or bylaws and all prior amendments thereto. If the
3 restated declaration corrects the percentage of common interest
4 as provided in subsection (b), the restated declaration shall
5 also amend the recorded conveyance instruments that govern the
6 unit owner's interest in the unit.

7 (d) The restated declaration or bylaws must be recorded
8 and, upon recordation, shall supersede the original declaration
9 or bylaws and all prior amendments thereto. In the event of any
10 conflict, the restated declaration or bylaws shall be
11 subordinate to the original declaration or bylaws and all prior
12 amendments thereto[-], except with regard to a determination of
13 the common elements and the limited common elements."

14 SECTION 6. Section 514B-154, Hawaii Revised Statutes, is
15 amended by amending subsections (b) and (c) to read as follows:

16 "(b) Financial statements, general ledgers, the accounts
17 receivable ledger, accounts payable ledgers, check ledgers,
18 insurance policies, contracts, and invoices of the association
19 for the duration those records are kept by the association and
20 delinquencies of ninety days or more shall be available for



1 examination by unit owners at convenient hours at a place
2 designated by the board; provided that:

3 (1) The board may require owners to furnish to the
4 association a one-time, duly executed and acknowledged
5 affidavit stating that the information is requested in
6 good faith for the protection of the interests of the
7 association, its members, or both; and

8 (2) Owners shall pay for administrative costs in excess of
9 eight hours per year.

10 Copies of these items shall be provided to any owner upon
11 the owner's request; provided that the owner pays a reasonable
12 fee for duplication, postage, stationery, and other
13 administrative costs associated with handling the request.

14 (c) After any association meeting, and not earlier, unit
15 owners shall be permitted to examine proxies, tally sheets,
16 ballots, owners' check-in lists, and the certificate of
17 election; provided that:

18 (1) Owners shall make a request to examine the documents
19 within thirty days after the association meeting;

20 (2) The board may require owners to furnish to the
21 association a one-time, duly executed and acknowledged



1 affidavit stating that the information is requested in
2 good faith for the protection of the interest of the
3 association or its members or both; and

4 (3) Owners shall pay for administrative costs in excess of
5 eight hours per year.

6 If there are no requests to examine proxies and ballots,
7 the documents may be destroyed thirty days after the association
8 meeting. If there are requests to examine proxies and ballots,
9 the documents shall be kept for an additional sixty days, after
10 which they may be destroyed. Copies of tally sheets, owners'
11 check-in lists, and the certificates of election from the most
12 recent association meeting shall be provided to any owner upon
13 the owner's request; provided that the owner pays a reasonable
14 fee for duplicating, postage, stationery, and other
15 administrative costs associated with handling the request."

16 SECTION 7. Section 514B-154.5, Hawaii Revised Statutes, is
17 amended by amending subsection (a) to read as follows:

18 "(a) Notwithstanding any other provision in the
19 declaration, bylaws, or house rules, if any, the following
20 documents, records, and information, whether maintained, kept,
21 or required to be provided pursuant to this section or section



1 514B-152, 514B-153, or 514B-154, shall be made available to any
2 unit owner and the owner's authorized agents by the managing
3 agent, resident manager, board through a board member, or the
4 association's representative:

5 (1) All financial and other records sufficiently detailed
6 in order to comply with requests for information and
7 disclosures related to the resale of units;

8 (2) An accurate copy of the declaration, bylaws, house
9 rules, if any, master lease, if any, a sample original
10 conveyance document, and all public reports and any
11 amendments thereto;

12 (3) Detailed, accurate records in chronological order of
13 the receipts and expenditures affecting the common
14 elements, specifying and itemizing the maintenance and
15 repair expenses of the common elements and any other
16 expenses incurred and monthly statements indicating
17 the total current delinquent dollar amount of any
18 unpaid assessments for common expenses;

19 (4) All records and the vouchers authorizing the payments
20 and statements kept and maintained at the address of



1 the project, or elsewhere within the State as
2 determined by the board, subject to section 514B-152;

3 (5) All signed and executed agreements for managing the
4 operation of the property, expressing the agreement of
5 all parties, including but not limited to financial
6 and accounting obligations, services provided, and any
7 compensation arrangements, including any subsequent
8 amendments;

9 (6) An accurate and current list of members of the
10 condominium association and the members' current
11 addresses and the names and addresses of the vendees
12 under an agreement of sale, if any. A copy of the
13 list shall be available, at cost, to any unit owner or
14 owner's authorized agent who furnishes to the managing
15 agent, resident manager, or the board a duly executed
16 and acknowledged affidavit stating that the list:

17 (A) Shall be used by the unit owner or owner's
18 authorized agent personally and only for the
19 purpose of soliciting votes or proxies or for
20 providing information to other unit owners with
21 respect to association matters; and



(B) Shall not be used by the unit owner or owner's authorized agent or furnished to anyone else for any other purpose;

(7) The association's most current financial statement, at no cost or on twenty-four-hour loan, at a convenient location designated by the board;

(8) Meeting minutes of the association, pursuant to section 514B-122;

(9) Meeting minutes of the board, pursuant to section 514B-126, which shall be:

(A) Available for examination by unit owners or owners' authorized agents at no cost or on twenty-four-hour loan at a convenient location at the project, to be determined by the board; or

(B) Transmitted to any unit owner or owner's authorized agent making a request for the minutes within fifteen days of receipt of the request by the owner or owner's authorized agent; provided that:

(i) The minutes shall be transmitted by mail, electronic mail transmission, or facsimile,



by the means indicated by the owner or
owner's authorized agent, if the owner or
owner's authorized agent indicated a
preference at the time of the request; and

(ii) The owner or owner's authorized agent shall
pay a reasonable fee for administrative
costs associated with handling the request,
subject to section 514B-105(d);

(10) Financial statements, general ledgers, the accounts
receivable ledger, accounts payable ledgers, check
ledgers, insurance policies, contracts, and invoices
of the association for the duration those records are
kept by the association, and any documents regarding
delinquencies of ninety days or more shall be
available for examination by unit owners or owners'
authorized agents at convenient hours at a place
designated by the board; provided that:

(A) The board may require unit owners or owners'
authorized agents to furnish to the association a
one-time, duly executed and acknowledged
affidavit stating that the information is



1 requested in good faith for the protection of the
2 interests of the association, its members, or
3 both; and

4 (B) Unit owners or owners' authorized agents shall
5 pay for administrative costs in excess of eight
6 hours per year;

7 (11) Proxies, tally sheets, ballots, unit owners' check-in
8 lists, and the certificate of election subject to
9 section 514B-154(c);

10 (12) Copies of an association's documents, records, and
11 information, whether maintained, kept, or required to
12 be provided pursuant to this section or section
13 514B-152, 514B-153, or 514B-154;

14 (13) A copy of the management contract from the entity that
15 manages the operation of the property before the
16 organization of an association;

17 (14) Other documents requested by a unit owner or owner's
18 authorized agent in writing; provided that the board
19 shall give written authorization or written refusal
20 with an explanation of the refusal within thirty



1 calendar days of receipt of a request for documents
2 pursuant to this paragraph; and

3 (15) A copy of any contract, written job description, and
4 compensation between the association and any person or
5 entity retained by the association to manage the
6 operation of the property on-site, including but not
7 limited to the general manager, operations manager,
8 resident manager, or site manager; provided that
9 personal information may be redacted from the contract
10 copy, including but not limited to the manager's date
11 of birth, age, signature, social security number,
12 residence address, telephone number, non-business
13 electronic mail address, driver's license number,
14 Hawaii identification card number, bank account
15 number, credit or debit card number, access code or
16 password that would permit access to the manager's
17 financial accounts, or any other information that may
18 be withheld under state or federal law."

19 SECTION 8. Statutory material to be repealed is bracketed
20 and stricken. New statutory material is underscored.



S.B. NO. 2235

1 SECTION 9. This Act shall take effect upon its approval.

2

INTRODUCED BY:

R. D. D. J.
by request



S.B. NO. 2235

Report Title:

Condominiums; Common Elements; Limited Common Elements;
Declaration; Bylaws; Association Documents

Description:

Amends definitions for "common elements" and "limited common elements" under the State's condominium laws. Specifies that determinations of common elements and limited common elements under an original declaration supersede determinations of common elements and limited common elements under any restated declaration. Requires a vote or written consent of the owners, rather than resolution adopted by the board of directors, when restating the declaration and bylaws, except for determinations of common elements and limited common elements. Limits the board of directors to requiring the submission of one-time only affidavits, when condominium owners request certain association documents.

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

