
A BILL FOR AN ACT

RELATING TO CONDOMINIUM ASSOCIATIONS.

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

1 SECTION 1. The legislature finds that associations of
2 apartment owners enjoy special protection as consumers.
3 Currently, the legislature has deemed individual condominium
4 owners deserving of the same level of protection as the owners
5 of single-family detached homes in recognition of the fact that
6 condominium owners may not have access to sufficient resources
7 to hire attorneys, consultants, and other advocates to act on
8 their behalf in dealings with Hawaii's business community.

9 The legislature further finds that when corporate interests
10 are in charge of these associations, they are neither
11 inexperienced in dealing with the business community nor do they
12 lack resources to hire professional services firms to represent
13 their interests. Therefore, giving them the special status of a
14 consumer is unnecessary and unwarranted. Importantly, this Act
15 preserves the special consumer status that association boards
16 enjoy in any and all cases where the board is not under the
17 control of a corporate entity or entities.



1 The purpose of this Act is to close a loophole in Hawaii
2 law that allows large, out-of-state corporations that control
3 apartment associations to masquerade as consumers and exploit
4 Hawaii's consumer protection legislation to their own benefit.

5 SECTION 2. Section 514B-104, Hawaii Revised Statutes, is
6 amended by amending subsection (a) to read as follows:

7 "(a) Except as provided in section 514B-105, and subject
8 to the provisions of the declaration and bylaws, the
9 association, even if unincorporated, may:

- 10 (1) Adopt and amend the declaration, bylaws, and rules and
11 regulations;
- 12 (2) Adopt and amend budgets for revenues, expenditures,
13 and reserves and collect assessments for common
14 expenses from unit owners, subject to section
15 514B-148;
- 16 (3) Hire and discharge managing agents and other
17 independent contractors, agents, and employees;
- 18 (4) Institute, defend, or intervene in litigation or
19 administrative proceedings in its own name on behalf
20 of itself or two or more unit owners on matters
21 affecting the condominium. For the purposes of



1 actions under chapter 480, [~~associations~~] an
2 association shall be deemed to be [~~"consumers"~~] a
3 "consumer" only if more than fifty per cent of the
4 units in the project are owned by individuals;

5 (5) Make contracts and incur liabilities;

6 (6) Regulate the use, maintenance, repair, replacement,
7 and modification of common elements;

8 (7) Cause additional improvements to be made as a part of
9 the common elements;

10 (8) Acquire, hold, encumber, and convey in its own name
11 any right, title, or interest to real or personal
12 property; provided that:

13 (A) Designation of additional areas to be common
14 elements or subject to common expenses after the
15 initial filing of the declaration or bylaws shall
16 require the approval of at least sixty-seven per
17 cent of the unit owners;

18 (B) If the developer discloses to the initial buyer
19 in writing that additional areas will be
20 designated as common elements whether pursuant to
21 an incremental or phased project or otherwise,



1 the requirements of this paragraph shall not
2 apply as to those additional areas; and

3 (C) The requirements of this paragraph shall not
4 apply to the purchase of a unit for a resident
5 manager, which may be purchased with the approval
6 of the board;

7 (9) Subject to section 514B-38, grant easements, leases,
8 licenses, and concessions through or over the common
9 elements and permit encroachments on the common
10 elements;

11 (10) Impose and receive any payments, fees, or charges for
12 the use, rental, or operation of the common elements,
13 other than limited common elements described in
14 section 514B-35(2) and (4), and for services provided
15 to unit owners;

16 (11) Impose charges and penalties, including late fees and
17 interest, for late payment of assessments and levy
18 reasonable fines for violations of the declaration,
19 bylaws, rules, and regulations of the association,
20 either in accordance with the bylaws or, if the bylaws
21 are silent, pursuant to a resolution adopted by the



- 1 board that establishes a fining procedure that states
2 the basis for the fine and allows an appeal to the
3 board of the fine with notice and an opportunity to be
4 heard and providing that if the fine is paid, the unit
5 owner shall have the right to initiate a dispute
6 resolution process as provided by sections 514B-161,
7 514B-162, or by filing a request for an administrative
8 hearing under a pilot program administered by the
9 department of commerce and consumer affairs;
- 10 (12) Impose reasonable charges for the preparation and
11 recordation of amendments to the declaration,
12 documents requested for resale of units, or statements
13 of unpaid assessments;
- 14 (13) Provide for cumulative voting through a provision in
15 the bylaws;
- 16 (14) Provide for the indemnification of its officers,
17 board, committee members, and agents, and maintain
18 directors' and officers' liability insurance;
- 19 (15) Assign its right to future income, including the right
20 to receive common expense assessments, but only to the
21 extent section 514B-105(e) expressly so provides;



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1 (16) Exercise any other powers conferred by the declaration
2 or bylaws;

3 (17) Exercise all other powers that may be exercised in
4 this State by legal entities of the same type as the
5 association, except to the extent inconsistent with
6 this chapter;

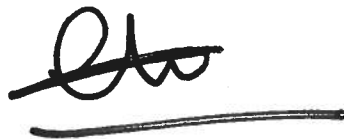
7 (18) Exercise any other powers necessary and proper for the
8 governance and operation of the association; and


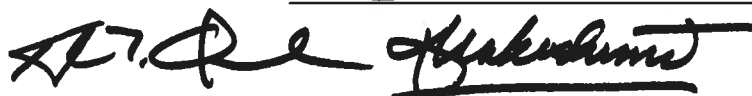

9 (19) By regulation, subject to sections 514B-146, 514B-161,
10 and 514B-162, require that disputes between the board
11 and unit owners or between two or more unit owners
12 regarding the condominium be submitted to nonbinding
13 alternative dispute resolution in the manner described
14 in the regulation as a prerequisite to commencement of
15 a judicial proceeding."

16 SECTION 3. Statutory material to be repealed is bracketed
17 and stricken. New statutory material is underscored.

18 SECTION 4. This Act shall take effect upon its approval.

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INTRODUCED BY: 





H.B. NO. 707

John M. ...

JAN 18 2019



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Report Title:

Condominium Associations; Powers; Consumers; Unfair or Deceptive Acts or Practices

Description:

Removes the capacity to bring an action based upon unfair or deceptive acts or practices from condominium associations in which individuals own fifty per cent or fewer of the units in the project.

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

