

JAN 23 2020

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 a number of existing
2 state laws concerning condominiums require clarification due to
3 unintended consequences resulting from amendments to other
4 sections, or provisions being subject to more than one
5 interpretation. Accordingly, the purpose of this Act is to:
- 6 (1) Clarify that all condominiums may amend their
7 declarations by the vote or written consent of owners
8 representing at least sixty-seven per cent of the
9 common interest, unless the unit owners agree to
10 require a higher percentage;
- 11 (2) Clarify the definition of "tenant" as it relates to
12 those qualified to serve as a member of the board in
13 the event a unit is owned by a corporation,
14 partnership, or limited liability company;
- 15 (3) Clarify that no association, board of directors,
16 association director, officer, attorney, or other
17 association representative shall be liable for damages



1 for libel, slander, or other defamation of character
2 of any person for any action taken with respect to the
3 distribution of any statement submitted by an owner
4 for purposes of determining qualifications to serve on
5 the board or soliciting proxies; and

6 (4) Clarify provisions concerning the installation of
7 solar energy devices on common elements or limited
8 common elements.

9 SECTION 2. Section 514B-32, Hawaii Revised Statutes, is
10 amended by amending subsection (a) to read as follows:

11 "(a) A declaration shall describe or include the
12 following:

- 13 (1) The land submitted to the condominium property regime;
14 (2) The number of the condominium map filed concurrently
15 with the declaration;
16 (3) The number of units in the condominium property
17 regime;
18 (4) The unit number of each unit and common interest
19 appurtenant to each unit;



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- 1 (5) The number of buildings and projects in the
- 2 condominium property regime, and the number of stories
- 3 and units in each building;
- 4 (6) The permitted and prohibited uses of each unit;
- 5 (7) To the extent not shown on the condominium map, a
- 6 description of the location and dimensions of the
- 7 horizontal and vertical boundaries of any unit. Unit
- 8 boundaries may be defined by physical structures or,
- 9 if a unit boundary is not defined by a physical
- 10 structure, by spatial coordinates;
- 11 (8) The condominium property regime's common elements;
- 12 (9) The condominium property regime's limited common
- 13 elements, if any, and the unit or units to which each
- 14 limited common element is appurtenant;
- 15 (10) The total percentage of the common interest that is
- 16 required to approve rebuilding, repairing, or
- 17 restoring the condominium property regime if it is
- 18 damaged or destroyed;
- 19 (11) The total percentage of the common interest, and any
- 20 other approvals or consents, that are required to
- 21 amend the declaration. Except as otherwise



1 specifically provided in this chapter, and except for
2 any amendments made pursuant to reservations set forth
3 in paragraph (12), the ~~[approval of the owners of]~~
4 declaration may be amended at any time by vote or
5 written consent of unit owners representing at least
6 sixty-seven per cent of the common interest ~~[shall be~~
7 ~~required for all amendments to the declaration,]~~
8 unless the declaration is amended by the unit owners
9 to require a higher percentage;

10 (12) Any rights that the developer or others reserve
11 regarding the condominium property regime, including,
12 without limitation, any development rights, and any
13 reservations to modify the declaration or condominium
14 map. An amendment to the declaration made pursuant to
15 the exercise of those reserved rights shall require
16 only the consent or approval, if any, specified in the
17 reservation; and

18 (13) A declaration, subject to the penalties set forth in
19 section 514B-69(b), that the condominium property
20 regime is in compliance with all zoning and building
21 ordinances and codes, and all other permitting



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1 requirements pursuant to section 514B-5 and chapter
2 205, including section 205-4.6 where applicable. In
3 the case of a project in the agricultural district
4 classified pursuant to chapter 205, the declaration,
5 subject to the penalties set forth in section
6 514B-69(b), shall include an additional statement that
7 there are no private restrictions limiting or
8 prohibiting agricultural uses or activities in
9 compliance with section 205-4.6. In the case of a
10 property that includes one or more existing structures
11 being converted to condominium property regime status,
12 the declaration required by this section shall
13 specify:

- 14 (A) Any variances that have been granted to achieve
15 the compliance; and
- 16 (B) Whether, as the result of the adoption or
17 amendment of any ordinances or codes, the project
18 presently contains any legal nonconforming
19 conditions, uses, or structures.

20 A property that is registered pursuant to section
21 514B-51 shall instead provide the required declaration



1 pursuant to section 514B-54. If a developer is
2 converting a structure to condominium property regime
3 status and the structure is not in compliance with all
4 zoning and building ordinances and codes, and all
5 other permitting requirements pursuant to section
6 514B-5, and the developer intends to use purchaser's
7 funds pursuant to the requirements of section 514B-92
8 or 514B-93 to cure the violation or violations, then
9 the declaration required by this paragraph may be
10 qualified to identify with specificity each violation
11 and the requirement to cure the violation by a date
12 certain."

13 SECTION 3. Section 514B-107, Hawaii Revised Statutes, is
14 amended by amending subsections (a) and (b) to read as follows:

15 "(a) Members of the board shall be unit owners or co-
16 owners, vendees under an agreement of sale, a trustee of a trust
17 which owns a unit, or an officer [~~, partner, member,~~] of a
18 corporation, a partner in a general partnership or limited
19 liability partnership, a general partner of a limited
20 partnership, a member of a member-managed limited liability
21 company, a manager of a manager-managed limited liability



1 company, or other person authorized to act on behalf of any
2 other legal entity that is not referenced in this section, which
3 owns a unit. There shall not be more than one representative on
4 the board from any one unit.

5 (b) No tenant, resident manager, or employee of a
6 condominium shall serve on its board.

7 For the purposes of this subsection, "tenant" means any
8 person who occupies a dwelling unit for dwelling purposes who is
9 not also either an owner of a dwelling unit in the same
10 condominium[-] or otherwise qualified to serve as a member of
11 the board under subsection (a)."

12 SECTION 4. Section 514B-123, Hawaii Revised Statutes, is
13 amended by amending subsection (i) to read as follows:

14 "(i) With respect to the use of association funds to
15 distribute proxies:

16 (1) Any board that intends to use association funds to
17 distribute proxies, including the standard proxy form
18 referred to in subsection (e), shall first post notice
19 of its intent to distribute proxies in prominent
20 locations within the project at least twenty-one days
21 before its distribution of proxies. If the board



1 receives within seven days of the posted notice a
2 request by any owner for use of association funds to
3 solicit proxies accompanied by a statement, the board
4 shall mail to all owners either:

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

9 (B) A proxy form containing no names, but accompanied
10 by a list of names of all owners who have
11 requested the use of association funds for
12 soliciting proxies and their statements.

13 The statement, which shall be limited to black text on
14 white paper, shall not exceed one single-sided
15 8-1/2" x 11" page, indicating the owner's
16 qualifications to serve on the board or reasons for
17 wanting to receive proxies; and

18 (2) A board or member of the board may use association
19 funds to solicit proxies as part of the distribution
20 of proxies. If a member of the board, as an
21 individual, seeks to solicit proxies using association



1 funds, the board member shall proceed as a unit owner
2 under paragraph (1).

3 No association, board of directors, association director,
4 officer, agent, or attorney or other association representative,
5 shall be liable in damages for libel, slander, or other
6 defamation of character of any person for any action taken with
7 respect to any statement submitted by an owner pursuant to this
8 subsection, including but not limited to mailing or distribution
9 of said statement pursuant to this subsection, regardless of
10 whether the association, its board of directors, directors,
11 officers, agents, attorneys, or other representatives know or
12 should have known such statement was libelous, slanderous, or
13 otherwise defamatory."

14 SECTION 5. Section 514B-140, Hawaii Revised Statutes, is
15 amended by amending subsections (c) and (d) to read as follows:

16 "(c) Subject to the provisions of the declaration,
17 nonmaterial additions to or alterations of the common elements
18 or units[7] made by the owner, including, without limitation,
19 additions to or alterations of a unit made within the unit or
20 within a limited common element appurtenant to and for the
21 exclusive use of the unit, shall require approval only by the



1 board, which shall not unreasonably withhold the approval, and
2 such percentage, number, or group of unit owners as may be
3 required by the declaration or bylaws; provided that:

4 (1) ~~[The]~~ Except as provided in paragraph (2), the
5 installation of solar energy devices by owners of
6 condominium units shall be allowed in accordance with
7 reasonable rules, regulations, and specifications
8 established by the board and upon written consent of
9 the board; and

10 (2) The installation of solar energy devices as defined in
11 section 196-7 shall be allowed on single-family
12 residential dwellings or townhouses pursuant to the
13 provisions in section 196-7.

14 As used in this subsection:

15 "Building-applied photovoltaic" means any new identifiable
16 facility, equipment, apparatus, or the like, which turns solar
17 energy into electric energy and is applied to the outside of a
18 building, such as roof-mounted photovoltaic solar panels.

19 "Building-integrated photovoltaic" means any new
20 identifiable facility, equipment, apparatus, or the like, which
21 generates electricity from solar energy and is integrated into



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1 the structural elements of a building, such as photovoltaic
2 windows and skylights.

3 "Nonmaterial additions and alterations" means an addition
4 to or alteration of the common elements or a unit that does not
5 jeopardize the soundness or safety of the property, reduce the
6 value thereof, impair any easement, detract from the appearance
7 of the project, interfere with or deprive any nonconsenting
8 owner of the use or enjoyment of any part of property, or
9 directly affect any nonconsenting owner.

10 "Passive solar skylights or windows" means any skylight or
11 window that regulates heating and cooling but does not generate
12 electricity from solar energy.

13 "Solar energy device" means any new identifiable facility,
14 equipment, apparatus, or the like which makes use of solar
15 energy for heating, cooling, or reducing the use of other types
16 of energy dependent upon fossil fuel for its generation,
17 including but not limited to all types of building-applied
18 photovoltaics and building-integrated photovoltaics; provided
19 that if the equipment sold cannot be used as a solar device
20 without its incorporation with other equipment, it shall be
21 installed in place and be ready to be made operational in order



1 to qualify as a "solar energy device"; provided further that
2 "solar energy device" shall not include passive solar skylights
3 or windows.

4 "Townhouse" means a series of individual houses, having
5 architectural unity and a common wall between each unit;
6 provided that each unit extends from the ground to the roof.

7 (d) Notwithstanding any other law to the contrary in this
8 chapter or any provisions in any declaration or bylaws:

9 (1) Regarding the installment of telecommunications
10 equipment:

11 (A) The board shall have the authority to install or
12 cause the installation of antennas, conduits,
13 chases, cables, wires, and other television
14 signal distribution and telecommunications
15 equipment upon the common elements of the
16 project; provided that the same shall not be
17 installed upon any limited common element without
18 the consent of the owner or owners of the unit or
19 units for the use of which the limited common
20 element is reserved; and



1 (B) The installation of antennas, conduits, chases,
2 cables, wires, and other television signal
3 distribution and telecommunications equipment
4 upon the common elements by the board shall not
5 be deemed to alter, impair, or diminish the
6 common interest, common elements, and easements
7 appurtenant to each unit, or to be a structural
8 alteration or addition to any building
9 constituting a material change in the plans of
10 the project filed in accordance with sections
11 514B-33 and 514B-34; provided that no
12 installation shall directly affect any
13 nonconsenting unit owner;

14 (2) Regarding the abandonment of telecommunications
15 equipment:

16 (A) The board shall be authorized to abandon or
17 change the use of any television signal
18 distribution and telecommunications equipment due
19 to technological or economic obsolescence or to
20 provide an equivalent function by different means
21 or methods; and



1 (B) The abandonment or change of use of any
2 television signal distribution or
3 telecommunications equipment by the board due to
4 technological or economic obsolescence or to
5 provide an equivalent function by different means
6 or methods shall not be deemed to alter, impair,
7 or diminish the common interest, common elements,
8 and easements appurtenant to each unit or to be a
9 structural alteration or addition to any building
10 constituting a material change in the plans of
11 the project filed in accordance with sections
12 514B-33 and 514B-34; and

13 (3) Regarding the installation of solar energy devices and
14 wind energy devices:

15 (A) The board shall have the authority to install or
16 cause the installation of, or lease or license
17 ~~[+]common[+]~~ elements for the installation of
18 solar energy devices and wind energy devices on
19 the common elements of the project ~~[, provided~~
20 ~~that solar]~~ except as provided in this subsection
21 related to limited common elements. Solar or



1 wind energy devices shall not be installed upon
2 any limited common element without the consent of
3 the owner or owners of the unit or units for
4 which use of the limited common element is
5 reserved[~~and~~] except that such consent shall
6 not be required with respect to the installation
7 of solar energy and wind energy devices on
8 portions of a building, such as a roof, where the
9 entire building is reserved as a limited common
10 element appurtenant to all units in the building;
11 and

12 (B) The installation of solar energy devices and wind
13 energy devices on the common elements of the
14 project by the board, including limited common
15 elements as provided in subparagraph (A), shall
16 not be deemed to alter, impair, or diminish the
17 common interest, common elements, or easements
18 appurtenant to each unit or to be a structural
19 alteration or addition to any building
20 constituting a material change in the plans of
21 the project filed in accordance with sections



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1 514B-33 and 514B-34; provided that the
2 installation does not directly affect any
3 nonconsenting unit owner."

4 SECTION 6. Statutory material to be repealed is bracketed
5 and stricken. New statutory material is underscored.

6 SECTION 7. This Act shall take effect on July 1, 2020.

7

INTRODUCED BY: *Rosalyn H Baker*
By Request



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Report Title:

Condominiums; Declarations; Amendments; Board of Directors; Member Qualifications; Defamation; Limitation of Actions; Solar Energy Devices

Description:

Clarifies that all condominiums may amend their declarations by the vote or written consent of owners representing at least sixty-seven per cent of the common interest, unless amended by the unit owners to require a higher percentage. Clarifies the definition of "tenant" as it relates to those qualified to serve as a member of the board in the event a unit is owned by a corporation, partnership, or limited liability company. Limits defamation actions against an association, board of directors, association director, officer, attorney, or other association representative. Clarifies provisions concerning the installation of solar energy devices on common elements or limited common elements.

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