

A Bill for an Act Relating to Horizontal Property Regimes.

Be It Enacted by the Legislature of the State of Hawaii:

SECTION 1. Chapter 514A, Hawaii Revised Statutes, is amended as follows:

1. By amending section 514A-14 to read as follows:

“~~[[§514A-14]]~~ **Parking stalls.** Notwithstanding any provision of the declaration, apartment owners [with the consent of the lessor and mortgagee, if any,] shall have the right to change the designation of parking stalls which are appurtenant to their respective apartments by amendment of the declaration and respective apartment leases or deeds involved. The amendment need only be signed and approved by the lessor (in the case of a leasehold project) and the owners (and their respective mortgagees if any) of the apartments whose parking stalls are being changed. The amendment shall be effective only upon recording or filing of the same of record with the bureau of conveyances.”

2. By amending section 514A-82 to read as follows:

“**§514A-82 Contents of bylaws.** The bylaws shall provide for at least the following:

- (1) The election of a board of directors, the number of persons constituting the same, and that the terms of at least one-third of the directors shall expire annually; the powers and duties of the board; the compensation, if any, of the directors; the method of removal from office of directors; and whether or not the board may engage the services of a manager or managing agent, or both, and specifying which of the powers and duties granted to the board by this chapter or otherwise may be delegated by the board to either or both of them.
- (2) Method of calling meetings of the apartment owners; what percentage, if other than a majority of apartment owners, constitutes a quorum; and what percentage is, consistent with this chapter, necessary to adopt decisions binding on all apartment owners.
- (3) Election of a president from among the board of directors who shall preside over the meetings of the board of directors and of the association of apartment owners.
- (4) Election of a secretary who shall keep the minute book wherein resolutions shall be recorded.
- (5) Election of a treasurer who shall keep the financial records and books of account.
- (6) Operation of the property, payment of the common expenses, and determination and collection of the common charges.

- (7) Manner of collecting [from the apartment owners their share of the common expenses[.], expenses, costs, and fees recoverable by the association under section 514A-94, and any penalties and late charges.
- (8) Designation and removal of personnel necessary for the maintenance, repair, and replacement of the common elements.
- (9) Method of adopting and¹ amending administrative rules and regulations governing the details of the operation and use of the common elements.
- (10) Such restrictions on and requirements respecting the use and maintenance of the apartments and the use of the common elements, not set forth in the declaration, as are designed to prevent unreasonable interference with the use of their respective apartments and of the common elements by the several apartment owners.
- (11) The bylaws may be amended at any time by the vote or written consent of not less than sixty-five per cent of all apartment owners, but each one of the particulars set forth in this section shall always be embodied in the bylaws.
- (12) The first meeting of the association of apartment owners shall be held not later than one hundred eighty days after recordation of the first apartment conveyance; provided forty per cent or more of the project has been sold and recorded. If forty per cent of the project is not sold and recorded at the end of one year, an annual meeting shall be called; provided ten per cent of the apartment owners so request.
- (13) All members of the board of directors shall be owners, co-owners, vendees under an agreement of sale, or an officer of any corporate owner of an apartment. The partners in a general partnership and the general partners of a limited partnership shall be deemed to be the owners of an apartment for this purpose. There shall not be more than one representative on the board of directors from any one apartment.
- (14) A director shall not vote or cast any proxy vote at any board meeting on any issue in which he has a conflict of interest.
- (15) No resident manager of the condominium shall serve on the board of directors.
- (16) The board of directors shall meet at least once a year.
- (17) Notices of association meetings, whether annual or special, shall be sent to each member of the association of apartment owners at least fourteen days prior to the meeting, and shall contain at least: the date, time, and place of the meeting, the items on the agenda for the meeting, and a standard proxy form authorized by the association, if any.
- [(18) A proxy form which accompanies a notice of meeting shall be valid for the meeting to which the notice pertains and its adjournment only and may designate any person as proxy and may be limited as the apartment owner desires and indicates.
- (19) The resident manager or managing agent or board of directors shall keep an accurate and current list of members of the association of

apartment owners and their current addresses and the names and addresses of the vendees under an agreement of sale, if any. The list shall be maintained at a place designated by the board of directors.

- (20) (18) All association and board of directors meetings shall be conducted in accordance with the most current edition of² Roberts Rules of Order[, or other accepted rules for the conduct of meetings].
- [(21)] (19) The members of the association of apartment owners may require, by vote at the annual meeting, a yearly audit of the association books by a certified public accountant.
- [(22)] (20) All meetings of the association of apartment owners shall be held at the address of the condominium project, or elsewhere within the State as determined by the board of directors.
- [(23)] (21) Notice of the annual board meeting shall be given in a reasonable manner at least fourteen days, if practicable, prior to the meeting.
- (22) Penalties chargeable against persons for violation of the covenants, conditions, or restrictions set forth in the declaration, or of the bylaws and administrative rules and regulations adopted pursuant thereto, method of determination of violations, and manner of enforcing such penalties, if any.
- [(24)] That the minutes of meetings of the board of directors and association of apartment owners and the association's financial statements shall be available for examination by apartment owners at convenient hours at a place designated by the board and shall be mailed to any owner upon the owner's request.]”

3. By adding a new section to be appropriately designated and to read as follows:

“§514A- **Board meetings.** (a) All meetings of the board of directors shall be open to all members of the association, provided that association members who are not on the board of directors may not participate in any deliberation or discussion unless expressly so authorized by the vote of a majority of a quorum of the board of directors.

(b) The board of directors, with the approval of a majority of a quorum of its members, may adjourn a meeting and reconvene in executive session to discuss and vote upon personnel matters or litigation in which the association is or may become involved. The nature of any and all business to be considered in executive session shall first be announced in open session.”

4. By adding a new section to be appropriately designated and to read as follows:

“§514A- **Proxies.** Proxy forms 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 apartment owner desires and indicates.”

5. By adding a new section to be appropriately designated and to read as follows:

“§514A- **Membership list.** The resident manager or managing agent or board of directors shall keep an accurate and current list of members of the association of apartment owners and their current addresses and the names and

addresses of the vendees under an agreement of sale, if any. The list shall be maintained at a place designated by the board of directors and a copy shall be available, at cost, to any member of the association as provided in the declaration or bylaws or rules and regulations or, in any case, to any member who furnishes to the resident manager or managing agent or board of directors a duly executed and acknowledged affidavit stating that the list (A) will be used by such owner personally and only for the purpose of soliciting votes or proxies or providing information to other owners with respect to association matters and (B) shall not be used by such owner or furnished to anyone else for any other purpose.”

6. By adding a new section to be appropriately designated and to read as follows:

“**§514A- Meeting minutes.** Minutes of meetings of the board of directors and association of apartment owners and the association’s financial statements shall be available for examination by apartment owners at convenient hours at a place designated by the board, shall be mailed to any owner upon the owner’s request, and shall include the recorded vote of each board member on all motions except motions voted on in executive session.”

7. By amending section 514A-88 to read as follows:

“**[[§514A-88]] Compliance with covenants, bylaws, and administrative provisions.** Each apartment owner, tenants and employees of an owner, and other persons using the property shall comply strictly with the bylaws and with the administrative rules and regulations adopted pursuant thereto, as either of the same may be lawfully amended from time to time, and with the covenants, conditions, and restrictions set forth in the declaration. Failure to comply with any of the same shall be ground for an action to recover sums due, for damages or injunctive relief, or both, maintainable by the manager or board of directors on behalf of the association of apartment owners or, in a proper case, by an aggrieved apartment owner.”

8. By amending section 514A-89 to read as follows:

“**§514A-89 Certain work prohibited.** No apartment owner shall do any work which could jeopardize the soundness or safety of the property, reduce the value thereof, or impair any easement or hereditament, nor may any apartment owner add any material structure or excavate any additional basement or cellar, without in every such case the [unanimous] consent of [all] seventy-five per cent of the [other] apartment owners, together with the consent of all apartment owners whose apartments or limited common elements appurtenant thereto are directly affected, being first obtained; provided that the installation of solar energy devices as defined by section 468B-1, or additions to or alterations of an apartment made within such apartment or within a limited common element appurtenant to and for the exclusive use of the apartment shall require approval only by the board of directors of the association of apartment owners and such percentage, number, or group of apartment owners as may be required by the declaration or bylaws.”

9. By amending section 514A-94 to read as follows:

“**[[§514A-94]] [Attorney’s] Attorneys’ fees and expenses of enforcement.** (a) All costs and expenses, including reasonable [attorney’s] attorneys’ fees, incurred by or on behalf of the association for:

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- (1) Collecting any delinquent assessments against any owner's apartment;
- (2) Foreclosing any lien thereon;
- (3) Enforcing any provision of the declaration, bylaws, house rules, and the Horizontal Property Act; or
- (4) The rules and regulations of the real estate commission;

against an owner, [or any] occupant, [of an apartment] tenant, employee of an owner, or any other person who may in any manner use the property shall be promptly paid on demand to the association by [the apartment owner;] such person or persons; provided that if the claims upon which the association takes any action are not substantiated, all costs and expenses, including reasonable [attorney's] attorneys' fees, incurred by [the apartment owner] any such person or persons as a result of the action of the association, shall be promptly paid on demand to [the apartment owner] such person or persons by the association."

(b) If any claim by an owner is substantiated in any action against an association, any of its officers or directors, or its board of directors to enforce any provision of the declaration, bylaws, house rules, or this chapter, then all reasonable and necessary expenses, costs and attorneys' fees incurred by an owner shall be awarded to such owner; provided that no such award shall be made in any derivative action unless:

- (1) The owner first shall have demanded and allowed reasonable time for the board of directors to pursue such enforcement; or,
- (2) The owner demonstrates to the satisfaction of the court that a demand for enforcement made to the board of directors would have been fruitless."

SECTION 2. This Act does not affect rights and duties that matured, penalties that were incurred, and proceedings that were begun, before its effective date.

SECTION 3. The substantive provisions of this Act shall amend any other conflicting Act enacted by the regular session of 1983, but nonsubstantive amendments made by this Act shall not supersede any substantive amendments made by any other Act enacted by the regular session of 1983.

SECTION 4. Statutory material to be repealed is bracketed. New material is underscored.³

SECTION 5. This Act shall take effect upon its approval.

(Approved May 28, 1983.)

Notes

1. Prior to amendment "of" appeared here.
2. Underscoring missing.
3. Edited pursuant to HRS §23G-16.5.