

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 by adding two new sections to be appropriately designated and to read as follows:

**“§514A- Remuneration to allow ingress and egress prohibited.** Ingress and egress through lobby areas or walkways, whether common elements, limited common elements, or individually owned, shall not be denied to apartment owners seeking access to the apartments. No payment of any fee or other type of remuneration by individual owners, singly or collectively, as part of an owners’ association, shall be allowed.

**§514A- Mailboxes for each dwelling required.** Any:

(1) Condominium:

(A) Built;

- (B) Rehabilitated, reconstructed, or otherwise improved to the extent that the value of the work required equals at least one per cent of the appraised value of the building; or
- (2) Existing building converted to condominium status;
- after the effective date of this Act, shall provide at least one mail box for each dwelling unit.”

SECTION 2. Section 514A-82, Hawaii Revised Statutes, is amended to read as follows:

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

(1) Board of directors:

(A) The election of a board of directors; [the]

(B) The number of persons constituting the [same, and that the terms of at least one-third of the directors shall expire annually; the] board; provided that condominiums with more than one hundred individual apartment units shall have an elected board of not less than nine members unless not less than seventy-five per cent of all apartment owners vote by secret written ballot to set the minimum number of directors at less than nine during an annual meeting or special meeting called for the purpose of reducing the minimum number of directors;

(C) That for the initial term of office, directors shall serve for a term of three years or the term as specified by the bylaws or until their successors have been elected or appointed;

(D) The powers and duties of the board; [the]

(E) The compensation, if any, of the directors; [the]

(F) The method of removal from office of directors; and [whether]

(G) 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[.] and that votes allocated to any area which constitutes a common element under section 514A-13(h) shall not be cast at any association meeting, whether or not it is so designated in the declaration.

- (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 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 and 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, nor shall a director vote at any board meeting on any issue in which [he] the director has a conflict of interest.
- (15) No resident manager of [the] a condominium shall serve on [the] its 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) No resident manager, or managing agent shall solicit, for use by such manager or managing agent, any proxies from any apartment owner of the association of owners which employs him, nor shall he cast any proxy vote at any association meeting except for the purpose of establishing a quorum. No member of a board of directors who uses association funds to solicit proxies, shall cast any proxy votes for the election or reelection of board members at any association meeting unless the proxy form specifically authorizes the board member to vote for the election or reelection of board directors.
- [(18)] (19) All association and board of directors meetings shall be conducted in accordance with the most current edition of [Roberts] Robert's Rules of Order.
- [(19)] (20) 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.
- [(20)] (21) 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.
- [(21)] (22) Notice of the annual board meeting shall be given in a reasonable manner at least fourteen days, if practicable, prior to the meeting.
- [(22)] (23) 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."

SECTION 3. Section 514A-13, Hawaii Revised Statutes, is amended to read as follows:

“[ ]§514A-13[ ] Common elements. (a) Each apartment shall have appurtenant thereto a common interest as expressed in the declaration.

(b) The common interest appurtenant to each apartment as expressed in the declaration shall have a permanent character and shall not be altered without the consent of all of the apartment owners affected, expressed in an amended declaration duly recorded. The common interest shall not be separated from the apartment to which it appertains and shall be deemed to be conveyed or encumbered with the apartment even though such interest is not expressly mentioned or described in the conveyance or other instrument.

(c) The common elements shall remain undivided and no right shall exist to partition or divide any part thereof, except as otherwise expressed in this chapter. Any provision to the contrary is void.

(d) Each apartment owner may use the common elements in accordance with the purpose for which they were intended without hindering or encroaching upon the lawful rights of the other apartment owners, subject always to the exclusive use of the limited common elements as provided in the declaration.

(e) The operation of the property shall be carried out as provided herein and in the declaration and the bylaws.

(f) The apartment owners shall have the irrevocable right, to be exercised by the board of directors, to have access to each apartment from time to time during reasonable hours as may be necessary for the operation of the property or for making emergency repairs therein necessary to prevent damage to the common elements or to another apartment or apartments.

(g) An undivided interest in the land included in the common elements equal to the apartment’s common interest may be leased to the apartment owner and the apartment and other common elements may be deeded to the apartment owner with a right of removal; and, this shall not constitute a division or partition of the common elements, or a separation of the common interest from the apartment to which it appertains; nor shall any such deed be construed as conveying title to the land included in the common elements.

(h) Lobby areas, swimming pools, recreation areas, saunas, storage areas, hallways, trash chutes, laundry chutes, and other similar areas not located inside apartments intended for residential use or the conduct of a business shall constitute common elements unless designated as limited common elements by the declaration.”

SECTION 4. This Act does not affect rights and duties that matured, penalties that were incurred, and proceedings that were begun, before its effective date.

SECTION 5. Statutory material to be repealed is bracketed. New material is underscored.<sup>1</sup>

SECTION 6. This Act shall take effect upon its approval.

(Approved May 18, 1984.)

**Note**

1. Edited pursuant to HRS §23G-16.5.