

ACT 362

S.B. NO. 1374

A Bill for an Act Relating to Multiple Unit Dwellings.

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

SECTION 1. Chapter 514A, Hawaii Revised Statutes, is amended by adding a new section to be appropriately designated and to read as follows:

“§514A- Duty of directors. Each director shall owe the association of apartment owners a fiduciary duty in the performance of the director’s responsibilities.”

SECTION 2. Chapter 514A, Hawaii Revised Statutes, is amended by adding a new section to be appropriately designated and to read as follows:

“§514A- Restatement of declaration and bylaws. (a) Notwithstanding any other provision of this chapter or of any other statute or instrument, an association of apartment owners may at any time restate the declaration of condominium property regime of the project or the bylaws of the association to set forth all amendments thereof by a resolution adopted by the board of directors.

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

(c) Upon the adoption of a resolution pursuant to subsections (a) or (b), the restated declaration of condominium property regime or bylaws shall set forth all

of the operative provisions of the declaration of condominium property regime or bylaws, as amended, together with a statement that the restated declaration of condominium property regime or bylaws correctly sets forth without change the corresponding provisions of the declaration of condominium property regime or bylaws, as amended, and that the restated declaration of condominium property regime or bylaws supersede the original declaration of condominium property regime or bylaws and all prior amendments thereto.

(d) The restated declaration of condominium property regime or bylaws shall be recorded in the manner provided in sections 514A-11 or 514A-82 or both and upon recordation shall supersede the original declaration of condominium property regime or bylaws and all prior amendments thereto; provided that in the event of any conflict, the restated declaration of condominium property regime or bylaws shall be subordinate to the original declaration of condominium property regime or bylaws and all prior amendments thereto."

SECTION 3. Chapter 514A, Hawaii Revised Statutes, is amended by adding a new section to be appropriately designated and to read as follows:

"§514A- Disposition of unclaimed possessions. (a) When personalty in or on the common elements of a project has been abandoned, the board of directors may sell the personalty in a commercially reasonable manner, store such personalty at the expense of its owner, donate such personalty to a charitable organization, or otherwise dispose of such personalty in its sole discretion; provided that no such sale, storage, or donation shall occur until sixty days after the board complies with the following:

- (1) The board notifies the owner in writing of:
 - (A) The identity and location of the personalty, and
 - (B) The board of directors' intent to so sell, store, donate, or dispose of the personalty. Notification shall be by certified mail, return receipt requested to the owner's address as shown by the records of the association or to an address designated by the owner for the purpose of notification or, if neither of these is available, to the owner's last known address, if any; or
- (2) If the identity or address of the owner is unknown, the board of directors shall first advertise the sale, donation, or disposition at least once in a daily paper of general circulation within the circuit in which the personalty is located.

(b) The proceeds of any sale or disposition of personalty under subsection (a) shall, after deduction of any accrued costs of mailing, advertising, storage, and sale, be held for the owner for thirty days. Any proceeds not claimed within this period shall become the property of the association of apartment owners."

SECTION 4. Chapter 514A, Hawaii Revised Statutes, is amended by adding a new section to be appropriately designated and to read as follows:

"§514A- Documents of the association of apartment owners. (a) The association's most current financial statement and minutes of the board of directors' meetings, once approved, shall be available to any owner at no cost or on twenty-four hour loan, at a convenient location designated by the board of directors.

(b) Minutes of meetings of the board of directors and the association for the current and prior year shall be available for examination by apartment owners at convenient hours at a place designated by the board. Minutes of meetings shall include the recorded vote of each board member on all motions except motions voted on in executive session. Copies of meeting minutes 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.

(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 current and prior year 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:

- (1) That the board may require owners to furnish to the association a 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) That 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 pay a reasonable fee for duplicating, 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 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.

(e) Owners may file a written request with the board to examine other documents. The board shall give written authorization or written refusal with an explanation of the refusal within thirty calendar days of receipt of the request."

SECTION 5. Chapter 514A, Hawaii Revised Statutes, is amended by adding a new section to be appropriately designated and to read as follows:

"§514A- Borrowing of money. Subject to any approval requirements and spending limits contained in the declaration or bylaws of the association of apartment owners, the board of directors may authorize the borrowing of money to be used by the association for the repair, replacement, maintenance, operation, or administration of the common elements of the project, or the making of any additions, alterations, and improvements thereto.

The cost of such borrowing, including, without limitation, all principal, interest, commitment fees, and other expenses payable with respect to such borrowing, shall be a common expense of the project; provided that owners representing fifty per cent of the common interest and owners give written consent to such borrowing, having been first notified of the purpose and use of the funds."

SECTION 6. Chapter 514A, Hawaii Revised Statutes, is amended by adding a new section to be appropriately designated and to read as follows:

"§514A- Pets, replacement of subsequent to prohibition. (a) Any apartment owner who keeps a pet in the owner's apartment pursuant to a provision in

the bylaws which allows owners to keep pets or in the absence of any provision in the bylaws to the contrary may, upon the death of the animal, replace the animal with another and continue to do so for as long as the owner continues to reside in the owner's apartment or another apartment subject to the same bylaws.

(b) Any apartment owner who is keeping a pet pursuant to subsection (a) as of the effective date of an amendment to the bylaws which prohibits owners from keeping pets in their apartments shall not be subject to the prohibition but shall be entitled to keep the pet and acquire new pets as provided in subsection (a)."

SECTION 7. Section 514A-13.5, Hawaii Revised Statutes, is amended to read as follows:

"[§514A-13.5] 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. This section shall apply to condominium property regimes in existence on May 18, 1984 and those formed thereafter, except as to lobby areas or walkways which are limited to common elements, or individually owned."

SECTION 8. Section 514A-82, Hawaii Revised Statutes, is amended by amending subsection (b) to read as follows:

"(b) In addition to the requirements of subsection (a), the bylaws shall provide for:

- (1) The method of removal from office of directors; that at any regular or special meeting of the apartment owners, any one or more members of the board of directors may be removed by the apartment owners and successors shall then and there be elected for the remainder of the term to fill the vacancies thus created. Such removal and replacement shall be in accordance with all applicable requirements and procedures in the bylaws for the removal and replacement of directors, including, but not limited to, any provisions relating to cumulative voting. If such removal and replacement is to occur at a special association meeting, the call for such meeting shall be by the president or by a petition to the secretary or managing agent signed by not less than twenty-five per cent of the apartment owners as shown in the association's record of ownership; and provided further that if the secretary or managing agent shall fail to send out the notices for the special meeting within fourteen days of receipt of the petition, then the petitioners shall have the authority to set the time, date and place for the special meeting and to send out the notices for the special meeting in accordance with the requirements of the bylaws. Except as otherwise provided herein, such meeting for the removal and replacement from office of directors shall be scheduled, noticed, and conducted in accordance with the bylaws of the association.
- (2) The bylaws may be amended at any time by the vote or written consent of sixty-five per cent of all apartment owners; provided that each one of the particulars set forth in this section shall be embodied in the bylaws always; and provided further that any proposed bylaws with the rationale for the proposal may be submitted by the board of directors

or by a volunteer apartment owners' committee. If submitted by that committee, it shall be accompanied by a petition signed by not less than twenty-five per cent of the apartment owners as shown in the association's record of ownership. The proposed bylaws, rationale, and ballots for voting on any proposed bylaw shall be mailed by the board of directors to the owners at the expense of the association for vote or written consent without change within thirty days of the receipt of the petition by the board of directors. The vote or written consent required to adopt the proposed bylaw shall not be less than¹ sixty-five per cent of all apartment owners; provided that the vote or written consent must be obtained within one hundred twenty days after mailing. In the event that the bylaw is duly adopted, then the board shall cause the bylaw amendment to be recorded in the bureau of conveyances or filed in the land court, as the case may be. The volunteer apartment owners' committee shall be precluded from submitting a petition for a proposed bylaw which is substantially similar to that which has been previously mailed to the owners within one year after the original petition was submitted to the board. This subsection shall not preclude any apartment owner or voluntary apartment owners' committee from proposing any bylaw amendment at any annual association meeting.

- (3) 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[; and].
- (4) No resident manager, or managing agent shall solicit, for use by the manager or managing agent, any proxies from any apartment owner of the association of owners which employs the resident manager or managing agent, nor shall the resident manager or managing agent 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 of these 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 and the board first posts notice of its intent to solicit proxies in prominent locations within the project at least thirty days prior to its solicitation of proxies; provided that if the board receives within seven days of the posted notice a request by any owner for use of association funds to solicit proxies accompanied by a statement, the board shall:
 - (A) Mail to all owners a proxy form containing either the names of all owners who have requested the use of association funds for soliciting proxies accompanied by their statements; or
 - (B) Mail to all owners a proxy form containing no names, but accompanied by a list of names of all owners who have requested the use of association funds for soliciting proxies and their statements.

The statement shall not exceed one hundred words, indicating the owner's qualifications to serve on the board and reasons for wanting to receive proxies.

- (5) A director who has a conflict of interest on any issue before the board shall disclose the nature of the conflict of interest prior to a vote on that issue at the board meeting, and the minutes of the meeting shall record the fact that a disclosure was made.

- (6) 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.
- (7) An owner shall not act as an officer of an association and an employee of the managing agent employed by the association.
- (8) An association's employees shall not engage in selling or renting apartments in the condominium in which they are employed except association-owned units, unless such activity is approved by an affirmative vote of sixty-five per cent of the membership.
- (9) The board of directors shall meet at least once a year. Whenever practicable, notice of all board meetings shall be posted by the resident manager or a member of the board in prominent locations within the project seventy-two hours prior to the meeting or simultaneously with notice to the board of directors.
- (10) Directors shall not expend association funds for their travel, directors' fees, and per diem, unless owners are informed and a majority approve of these expenses.
- (11) Associations at their own expense shall provide all board members with a current copy of the association's declaration, bylaws, house rules, and, annually, a copy of this chapter with amendments.

The provisions of this subsection shall be deemed incorporated into the bylaws of all condominium projects existing as of January 1, 1988, and all condominium projects created after that date."

SECTION 9. Section 514A-83.2, Hawaii Revised Statutes, is amended by amending subsection (c) to read as follows:

"(c) Proxies may be given to the board of directors [as an entity.]; provided that the proxy form shall contain a box wherein the owner may indicate that the owner wishes the vote to be shared with each board member receiving an equal percentage. Proxy forms which are not marked shall be considered a choice by the owner that the vote be made on the basis of the preference of the majority of the board."

SECTION 10. Section 514A-83.4, Hawaii Revised Statutes is amended to read as follows:

"§514A-83.4 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 at the owner's cost and] shall include the recorded vote of each board member on all motions except motions voted on in executive session."

SECTION 11. Section 514A-85, Hawaii Revised Statutes, is amended to read as follows:

"§514A-85 Books of receipts and expenditures; unpaid assessments; availability for examination. The manager or board of directors shall keep detailed, accurate records in chronological order, of the receipts and expenditures affecting the common elements, specifying and itemizing the maintenance and repair expenses of the common elements and any other expenses incurred.

The manager or board of directors shall also keep monthly statements indicating the total current delinquent dollar amount of any unpaid assessments for common expenses.

All records and the vouchers authorizing the payments, and statements shall be kept and maintained at the address of the project, or elsewhere within the State as determined by the board of directors[, and shall be available for examination by the apartment owners at owners¹ at convenient hours of week days].

The manager or board of directors shall not transfer by telephone association funds between accounts, including, but not limited to, the general operating account and reserve fund account.”

SECTION 12. Section 514A-90, Hawaii Revised Statutes, is amended by amending subsection (a) to read as follows:

“(a) All sums assessed by the association of apartment owners but unpaid for the share of the common expenses chargeable to any apartment constitute a lien on the apartment prior to all other liens, except only (1) liens for taxes and assessments lawfully imposed by governmental authority against the apartment, and (2) all sums unpaid on any [mortgages] mortgage of record[,] which was recorded prior to the recordation of a notice of a lien by the association of apartment owners, and costs and expenses including [attorney’s] attorneys’ fees provided in such mortgages. The lien of the association of apartment owners may be foreclosed by action by the manager or board of directors, acting on behalf of the apartment owners, in like manner as a mortgage of real property. In any such foreclosure the apartment owner shall be required to pay a reasonable rental for the apartment, if so provided in the bylaws, and the plaintiff in the foreclosure shall be entitled to the appointment of a receiver to collect the same. The manager or board of directors, acting on behalf of the apartment owners, may, unless prohibited by the declaration, bid on the apartment at foreclosure sale, and acquire and hold, lease, mortgage, and convey the same. Action to recover a money judgment for unpaid common expenses shall be maintainable without foreclosing or waiving the lien securing the same.”

SECTION 13. Statutory material to be repealed is bracketed. New statutory material is underscored.²

SECTION 14. This Act shall take effect upon its approval.

(Approved June 19, 1989.)

Notes

1. So in original.

2. Edited pursuant to HRS §23G-16.5.