

ACT 22

S.B. NO. 2527

A Bill for an Act Relating to Condominiums.

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

SECTION 1. The legislature finds that confusion remains concerning whether condominium laws require the board of directors of a condominium association to comply with the notice requirements of section 514A-82(b)(4), Hawaii Revised Statutes, when soliciting proxies in connection with annual meetings. The legislature has repeatedly addressed the issue of proxies over the years in an attempt to ensure that a level playing field exists between individual owners and the board of directors and managing agents. Section 514A-82(b)(4) provides that if a member of the board uses association funds to solicit proxies, the member may not cast any of the proxies for the election or reelection of board members unless the proxy form specifically authorizes such action and the board first posts notice of its intent to solicit proxies in prominent locations within the project at least thirty days prior to the solicitation.

It is the intent of the legislature that this thirty day notice provision apply only to proxies “distributed” by the board if association funds are used.

The legislature also finds that copies, facsimile telecommunications, and other reliable reproductions of proxies should be permitted.

Accordingly, the purpose of this Act is to clarify that a board of directors of a condominium association that distributes proxies using association funds must comply with the thirty day notice requirement and that a copy, facsimile telecommunication, or other reliable reproduction of a proxy may be used in lieu of the original.

SECTION 2. 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:] be consistent with the following provisions:

- (1) [The method of removal from office of directors; that at] 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. The 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] provision relating to cumulative voting. If removal and replacement is to occur at a special association meeting, the call for the 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 associa-

tion'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.] in this section, the 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] the proposal 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 than 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 that 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.
- (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 that 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] Any board of directors [who uses] that intends to use association funds to [solicit] distribute proxies, including the standard proxy form referred to in paragraph (3), 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] post notice of its intent to [solicit] distribute proxies in prominent locations within the project at least thirty days prior to its [solicitation] distribution 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 mail to all owners either:

- (A) A proxy form containing the names of all owners who have requested the use of association funds for soliciting proxies accompanied by their statements; or
- (B) 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.
- (12) The directors may expend association funds, which shall not be deemed to be compensation to the directors, to educate and train themselves in subject areas directly related to their duties and responsibilities as directors; provided that the approved annual operating budget shall include these expenses as separate line items. These expenses may include registration fees, books, videos, tapes, other educational materials, and economy travel expenses. Except for economy travel expenses within the State, all other travel expenses incurred under this subsection shall be subject to the requirements of [subsection 514A-82(b)(10).] paragraph (10).
- (13) A lien created pursuant to section 514A-90 may be enforced by the association in any manner permitted by law, including nonjudicial or power of sale foreclosure procedures authorized by chapter 667, as that chapter may be amended from time to time.

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 3. Section 514A-83.2, Hawaii Revised Statutes, is amended to read as follows:

- “§514A-83.2 Proxies. (a) A proxy, to be valid, must:
- (1) Be delivered to the secretary of the association of apartment owners or the managing agent, if any, no later than 4:30 p.m. on the second business day prior to the date of the meeting to which it pertains;
 - (2) Contain at least the name of the association of apartment owners, the date of the meeting of the association of apartment owners, the printed [name and signature of the person or] names and signatures of the persons giving the proxy, the [apartment or] apartments for which the proxy is given, and the date that the proxy is given; and
 - (3) Contain boxes wherein the owner has indicated that the proxy is given:
 - (A) For quorum purposes only;
 - (B) To the individual whose name is printed on a line next to this box;
 - (C) To the board of directors as a whole and that the vote be made on the basis of the preference of the majority of the board; or
 - (D) To those directors present at the meeting and the vote to be shared with each board member receiving an equal percentage.

(b) A proxy 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; provided that no proxy shall be irrevocable unless coupled with a financial interest in the unit.

(c) No [officer of a] board of directors or member of the board shall use association funds to solicit proxies[;] except for the distribution of proxies as set forth in section 514A-82(b)(4); provided that this shall not prevent an [officer from exercising the officer’s right] individual member of the board from soliciting proxies as an apartment owner under section 514A-82(b)(4).

(d) A copy, facsimile telecommunication, or other reliable reproduction of a proxy may be used in lieu of the original proxy for any and all purposes for which the original proxy could be used; provided that any copy, facsimile telecommunication, or other reproduction shall be a complete reproduction of the entire original proxy.

[(d)] (e) Nothing in this section shall affect the holder of any proxy under a first mortgage of record encumbering an apartment or under an agreement of sale affecting an apartment.”

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

SECTION 5. This Act shall take effect upon its approval and shall apply retroactively to all condominium projects existing as of the approval of this Act and to all condominium projects created thereafter.

(Approved April 19, 2000.)