

ACT 62

H.B. NO. 2272

A Bill for an Act Relating to Condominium Associations.

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

SECTION 1. Section 514B-32, Hawaii Revised Statutes, is amended by amending subsection (a) to read as follows:

- “(a) A declaration shall describe or include the following:
 - (1) The land submitted to the condominium property regime;
 - (2) The number of the condominium map filed concurrently with the declaration;
 - (3) The number of units in the condominium property regime;
 - (4) The unit number of each unit and common interest appurtenant to each unit;
 - (5) The number of buildings and projects in the condominium property regime, and the number of stories and units in each building;
 - (6) The permitted and prohibited uses of each unit;
 - (7) To the extent not shown on the condominium map, a description of the location and dimensions of the horizontal and vertical boundaries of any unit. Unit boundaries may be defined by physical structures or, if a unit boundary is not defined by a physical structure, by spatial coordinates;
 - (8) The condominium property regime’s common elements;
 - (9) The condominium property regime’s limited common elements, if any, and the unit or units to which each limited common element is appurtenant;
 - (10) The total percentage of the common interest that is required to approve rebuilding, repairing, or restoring the condominium property regime if it is damaged or destroyed;
 - (11) The total percentage of the common interest, and any other approvals or consents, that are required to amend the declaration. Except as otherwise specifically provided in this chapter, and except for any amendments made pursuant to reservations set forth in paragraph

- (12), the ~~[approval of the owners of]~~ declaration may be amended at any time by the vote or written consent of unit owners representing at least sixty-seven per cent of the common interest [shall be required for all amendments to the declaration]; unless the declaration is amended by the unit owners to require a higher percentage;
- (12) Any rights that the developer or others reserve regarding the condominium property regime, including, without limitation, any development rights, and any reservations to modify the declaration or condominium map. An amendment to the declaration made pursuant to the exercise of those reserved rights shall require only the consent or approval, if any, specified in the reservation; and
- (13) A declaration, subject to the penalties set forth in section 514B-69(b), that the condominium property regime is in compliance with all zoning and building ordinances and codes, and all other permitting requirements pursuant to section 514B-5 and chapter 205, including section 205-4.6 where applicable. In the case of a project in the agricultural district classified pursuant to chapter 205, the declaration, subject to the penalties set forth in section 514B-69(b), shall include an additional statement that there are no private restrictions limiting or prohibiting agricultural uses or activities in compliance with section 205-4.6. In the case of a property that includes one or more existing structures being converted to condominium property regime status, the declaration required by this section shall specify:
- (A) Any variances that have been granted to achieve the compliance; and
- (B) Whether, as the result of the adoption or amendment of any ordinances or codes, the project presently contains any legal nonconforming conditions, uses, or structures.
- A property that is registered pursuant to section 514B-51 shall instead provide the required declaration pursuant to section 514B-54. If a developer is converting a structure to condominium property regime status and the structure is not in compliance with all zoning and building ordinances and codes, and all other permitting requirements pursuant to section 514B-5, and the developer intends to use purchaser's funds pursuant to the requirements of section 514B-92 or 514B-93 to cure the violation or violations, then the declaration required by this paragraph may be qualified to identify with specificity each violation and the requirement to cure the violation by a date certain."

SECTION 2. Section 514B-83, Hawaii Revised Statutes, is amended by amending subsection (a) to read as follows:

- "(a) A developer's public report shall contain:
- (1) The name and address of the project, and the name, address, telephone number, and electronic mail address, if any, of the developer or the developer's agent;
- (2) A statement of the deadline, pursuant to section 514B-89, for completion of construction or, in the case of a conversion, for the completion of any repairs required to comply with section 514B-5, and the remedies available to the purchaser, including but not limited to cancellation of the sales contract, if the completion of construction or repairs does not occur on or before the completion deadline;
- (3) A breakdown of the annual maintenance fees, which includes the annual reserve contributions based on a reserve study, and the

monthly estimated cost for each unit, certified to have been based on generally accepted accounting principles, and a statement regarding when a purchaser shall become obligated to start paying the fees pursuant to section 514B-41(b);

- (4) A description of all warranties for the individual units and the common elements, including the date of initiation and expiration of any such warranties, or a statement that no warranties exist;
- (5) A summary of the permitted uses of the units and, if applicable, the number of units planned to be devoted to a particular use;
- (6) A description of any development rights reserved to the developer or others;
- (7) A declaration, subject to the penalties set forth in section 514B-69(b), that the project is in compliance with all county zoning and building ordinances and codes, chapter 205, including section 205-4.6 where applicable, and all other county permitting requirements applicable to the project, pursuant to sections 514B-5 and 514B-32(a)(13); and
- (8) Any other facts, documents, or information that would have a material impact on the use or value of a unit or any appurtenant limited common elements or amenities of the project available for an owner's use, or that may be required by the commission."

SECTION 3. Section 514B-108, Hawaii Revised Statutes, is amended by amending subsection (e) to read as follows:

"(e) The bylaws may be amended at any time by the vote or written consent of at least sixty-seven per cent of all unit owners. Any proposed bylaws together with the detailed rationale for the proposal may be submitted by the board or by a volunteer unit owners group. If submitted by that group, the proposal shall be accompanied by a petition signed and dated by not less than twenty-five per cent of the unit owners as shown in the association's record of ownership. The petition shall be valid only if submitted within one hundred twenty days of the earliest signature. The proposed bylaws, rationale, and ballots for voting on any proposed bylaw shall be mailed by the board 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. The vote or written consent, to be valid, ~~[must]~~ shall be obtained within three hundred sixty-five days after mailing for a proposed bylaw submitted by either the board or a volunteer unit owners group. If the bylaw is duly adopted, the board shall cause the bylaw amendment to be recorded. The volunteer unit owners group 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 three hundred sixty-five days after the original petition was submitted to the board.

This subsection shall not preclude any unit owner or volunteer unit owners group from proposing any bylaw amendment at any annual association meeting."

SECTION 4. Section 514B-121, Hawaii Revised Statutes, is amended as follows:

1. By amending subsections (b) and (c) to read:

"(b) Notwithstanding any other provision of this chapter, except as provided in subsection (e), or the declaration or bylaws of a condominium to the contrary, at any association meeting the board may direct the use of an electronic voting device regardless of whether a secret ballot is used or required. Except as provided in subsection (e), the use shall be subject to the following:

- (1) The electronic voting device and all associated equipment shall be isolated from any connection to an external network, including the Internet[;], or shall use a form of encryption comparable to that used for secured internet web browsers;
- (2) The board shall establish reasonable procedures to provide for the secrecy and integrity of the unit owners' votes, including but not limited to procedures that ensure the availability of a printed audit trail containing:
 - (A) The reference number or internet address of the electronic voting device;
 - (B) Each common interest voted; and
 - (C) The vote that was tabulated;
- (3) A copy of the printed audit trail shall be available to owners after the meeting in the same manner provided by sections 514B-154 and 514B-154.5; and
- (4) A copy of the procedures established pursuant to paragraph (2) shall be available at no charge to any owner and a copy shall be available at any meeting at which the association uses an electronic voting device.

~~[In the event of]~~ If any conflict arises between this subsection and subsection (e), subsection (e) shall control.

(c) Special meetings of the association may be called by the president, a majority of the board, or by a petition to the secretary or managing agent signed and dated by not less than twenty-five per cent of the unit owners as shown in the association's record of ownership; provided that if the secretary or managing agent fails to send out the notices for the special meeting within fourteen days of receipt of the petition, the petitioners shall have the authority to set the time, date, and place for the special meeting and to send out the notices and proxies for the special meeting at the association's expense in accordance with the requirements of the bylaws and of this part; provided further that a special meeting based upon a petition to the secretary or managing agent shall be set no later than sixty days from receipt of the petition. The petition shall be valid only if submitted within one hundred twenty days of the earliest signature."

2. By amending subsection (e) to read:

"(e) All association meetings shall be conducted in accordance with the most recent edition of Robert's Rules of Order Newly Revised. Notwithstanding any provision to the contrary in the association's declaration or bylaws or in subsection (b), electronic meetings and electronic, machine, or mail voting [shall] may be authorized[;] by the board in its sole discretion:

- (1) During any period in which a state of emergency or local state of emergency, declared pursuant to chapter 127A, is in effect in the county in which the condominium is located;
- (2) For any association meeting for which notice was given while a state of emergency or local state of emergency, declared pursuant to chapter 127A, was in effect for the county in which the condominium is located but is no longer in effect as of the date of the meeting; provided that the meeting is held within sixty days of the date the notice was first given; ~~[or]~~
- (3) For any electronic, machine, or mail voting for which notice of voting has been sent; provided that the electronic, machine, or mail voting deadline is within sixty days of the date the notice was first sent;
- (4) Whenever approved in advance by:
 - (A) Written consent of a majority of unit owners; or

- (B) Majority vote at an association meeting; or
 [(3)] (5) Whenever otherwise authorized in an association's declaration or bylaws.

The association shall implement reasonable measures to verify that each person permitted to vote is a member of the association or proxy of a member.

As used in this subsection, "mail voting" includes sending or receiving written ballots via mail, courier, or electronic transmission; provided that the transmission is a complete reproduction of the original."

SECTION 5. Section 514B-122, Hawaii Revised Statutes, is amended by amending subsection (a) to read as follows:

"(a) Minutes of meetings of the association shall be approved at the next succeeding regular meeting or by the board~~[- within sixty days after the meeting]~~, if authorized by the owners at an annual meeting. If approved by the board, owners shall be given a copy of the approved minutes or notified of the availability of the minutes within thirty days after approval."

SECTION 6. Section 514B-123, Hawaii Revised Statutes, is amended by amending subsection (d) to read as follows:

- "(d) A proxy, to be valid, shall:
- (1) Be delivered to the secretary of the association or the managing agent, if any, no later than 4:30 p.m. Hawaii-Aleutian Standard Time on the second business day prior to the date of the meeting to which it pertains; and
 - (2) Contain at least the name of the association, the date of the meeting of the association, the printed names and signatures of the persons giving the proxy, the unit numbers for which the proxy is given, the names of persons to whom the proxy is given, and the date that the proxy is given."

SECTION 7. Section 514B-125, Hawaii Revised Statutes, is amended by amending subsection (b) to read as follows:

"(b) ~~[Following any election of board members by the association, the board may]~~at the board's next regular meeting or at a duly noticed special meeting, establish rules for owner participation in any deliberation or discussion at board meetings, other than executive sessions. A board that establishes such rules pursuant to this subsection:

- (1) Shall notify all owners of these rules; and
- (2) May amend these rules at any regular or duly noticed special meeting of the board; provided that all owners shall be notified of any adopted amendments.

The board may make the rules available to owners on an association website."

SECTION 8. Section 514B-148, Hawaii Revised Statutes, is amended as follows:

1. By amending subsection (a) to read:

"(a) The budget required under section 514B-144(a) shall include at least the following:

- (1) The estimated revenues and operating expenses of the association;
- (2) Information as to whether the budget has been prepared on a cash or accrual basis;
- (3) The total replacement reserves of the association as of the date of the budget;

- (4) The estimated replacement reserves that the association will require to maintain the property based on a reserve study performed by the association; provided that the reserve study shall be reviewed by an independent reserve study preparer; provided further that the reserve study shall be reviewed or updated at least every three years;
- (5) A general explanation of how the estimated replacement reserves are computed;
- (6) The amount the association must collect for the fiscal year to fund the estimated replacement reserves; and
- (7) Information as to whether the amount the association must collect for the fiscal year to fund the estimated replacement reserves was calculated using a per cent funded or cash flow plan. The method or plan shall not circumvent the estimated replacement reserves amount determined by the reserve study pursuant to paragraph (4)."

2. By amending subsection (h) to read:

"(h) As used in this section:

"Capital expenditure" means an expense that results from the purchase or replacement of an asset whose life is greater than one year, or the addition of an asset that extends the life of an existing asset for a period greater than one year.

"Cash flow plan" means a minimum [~~twenty-year~~] thirty-year projection of an association's future income and expense requirements to fund fully its replacement reserves requirements each year during that [~~twenty-year~~] thirty-year period, except in an emergency; provided that it does not include a projection of special assessments or loans during that [~~twenty-year~~] thirty-year period, except in an emergency.

"Emergency situation" means any extraordinary expenses:

- (1) Required by an order of a court;
- (2) Necessary to repair or maintain any part of the property for which the association is responsible where a threat to personal safety on the property is discovered;
- (3) Necessary to repair any part of the property for which the association is responsible that could not have been reasonably foreseen by the board in preparing and distributing the annual operating budget;
- (4) Necessary to respond to any legal or administrative proceeding brought against the association that could not have been reasonably foreseen by the board in preparing and distributing the annual operating budget; or
- (5) Necessary for the association to obtain adequate insurance for the property [~~which~~] that the association must insure.

"Major maintenance" means an expenditure for maintenance or repair that will result in extending the life of an asset for a period greater than one year.

"Replacement reserves" means funds for the upkeep, repair, or replacement of those parts of the property, including but not limited to roofs, walls, decks, paving, and equipment, that the association is obligated to maintain."

SECTION 9. This Act does not affect rights and duties that matured, penalties that were incurred, and proceedings that were begun before its effective date.

SECTION 10. Statutory material to be repealed is bracketed and stricken. New statutory material is underscored.

SECTION 11. This Act shall take effect on January 1, 2023.
(Approved June 17, 2022.)