
A BILL FOR AN ACT

RELATING TO CONDOMINIUM GOVERNING INSTRUMENTS.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF HAWAII:

1 SECTION 1. Section 514A-11, Hawaii Revised Statutes, is
2 amended to read as follows:

3 "§514A-11 Recordation and contents of declaration. The
4 bureau of conveyances and the land court shall immediately set
5 up the mechanics and method by which recordation of a master
6 deed or lease and the declaration may be made. Provisions shall
7 be made for the recordation of instruments affecting the
8 individual apartments on subsequent resales, mortgages, and
9 other encumbrances, as is done with all other real estate
10 recordations; provided that land court certificates of title
11 shall not be issued for apartments. The declaration to which
12 section 514A-20 refers shall express the following particulars:

- 13 (1) Description of the land, whether leased or in fee
14 simple, on which the building or buildings and
15 improvements are or are to be located;
- 16 (2) Description of the building or buildings, stating the
17 number of stories and basements, the number of



- 1 apartments, and the principal materials of which it or
2 they is or are constructed or to be constructed;
- 3 (3) The apartment number of each apartment, and a
4 statement of its location, approximate area, number of
5 rooms, immediate common element to which it has
6 access, designated parking stall if considered a
7 limited common element, and any other data necessary
8 for its proper identification;
- 9 (4) Description of the common elements;
- 10 (5) Description of the limited common elements, if any,
11 stating to which apartments their use is reserved;
- 12 (6) The percentage of undivided interest in the common
13 elements appertaining to each apartment and its owner
14 for all purposes, including voting;
- 15 (7) Statement of the purposes for which the building or
16 buildings and each of the apartments are intended and
17 restricted as to use;
- 18 (8) The name of a person to receive service of process in
19 the cases hereinafter provided, together with the
20 residence or place of business of the person which



1 shall be within the county in which the property is
2 located;

3 (9) Provision as to the percentage of votes by the
4 apartment owners which shall be determinative of
5 whether to rebuild, repair, or restore the property in
6 the event of damage or destruction of all or part of
7 the property;

8 (10) Any further details in connection with the property
9 that the person executing the declaration may deem
10 desirable to set forth consistent with this chapter;

11 (11) The method by which the declaration may be amended,
12 consistent with this chapter; provided that an
13 amendment to the declarations of all condominium
14 projects existing as of May 22, 1991, and all
15 condominium projects created thereafter shall require
16 [a], after any proposed amendment, rationale, and
17 ballots for voting are mailed by the board to the
18 owners at the expense of the association for vote or
19 written consent, the vote or written consent of
20 seventy-five per cent of all apartment owners[7];
21 provided further that, to be valid, the vote or



1 written consent must be obtained within three hundred
2 sixty-five days after the mailing; provided further
3 that voting shall cease if the required approval is
4 obtained prior to the passage of three hundred sixty-
5 five days after the mailing, upon which the proposed
6 amendment shall be duly adopted, or if a sufficient
7 percentage have voted in the negative so that passage
8 is unobtainable; provided further that if at least
9 seventy-five per cent approval of all apartment owners
10 is not obtained by the three hundred sixty-fifth day
11 after the mailing, then the amendment shall be duly
12 adopted if at least seventy-five per cent of those
13 apartment owners who voted approved the amendment;
14 except as otherwise provided in this chapter; provided
15 further that the declarations of condominium projects
16 having five or fewer apartments may provide for the
17 amendment thereof by a vote or written consent of more
18 than seventy-five per cent of all apartment owners;
19 (12) Description as to any additions, deletions,
20 modifications, and reservations as to the property,
21 including without limitation provisions concerning the



1 merger or addition of later phases of the project. To
2 the extent provided in the declaration, an amendment
3 to the declaration that is made to implement those
4 additions, deletions, modifications, reservations, or
5 merger provisions shall require the vote or written
6 consent of only the declarant or such percentage of
7 apartment owners as is provided in the declaration;
8 and

9 (13) A declaration subject to the penalties set forth in
10 section 514A-49(b) that the condominium property
11 regime is in compliance with all zoning and building
12 ordinances and codes, and all other permitting
13 requirements pursuant to section 514A-1.6, and
14 specifying in the case of a property which includes
15 one or more existing structures being converted to
16 condominium status:

17 (A) Any variances which have been granted to achieve
18 such compliance; and

19 (B) Whether, as the result of the adoption or
20 amendment of any ordinances or codes, the project



1 presently contains any legal non-conforming uses
2 or structures;
3 except that a property that is registered pursuant to
4 section 514A-31 shall instead provide this declaration
5 pursuant to [+]section[+] 514A-40."

6 SECTION 2. Section 514A-82, Hawaii Revised Statutes, is
7 amended by amending subsection (b) to read as follows:

8 "(b) In addition to the requirements of subsection (a), the
9 bylaws shall be consistent with the following provisions:

10 (1) At any regular or special meeting of the apartment
11 owners, any one or more members of the board of
12 directors may be removed by the apartment owners and
13 successors shall then and there be elected for the
14 remainder of the term to fill the vacancies thus
15 created. The removal and replacement shall be by a
16 vote of a majority of the apartment owners and,
17 otherwise, in accordance with all applicable
18 requirements and procedures in the bylaws for the
19 removal and replacement of directors. If removal and
20 replacement is to occur at a special association
21 meeting, the call for the meeting shall be by the



1 president or by a petition to the secretary or
2 managing agent signed by not less than twenty-five per
3 cent of the apartment owners as shown in the
4 association's record of ownership; provided that if
5 the secretary or managing agent shall fail to send out
6 the notices for the special meeting within fourteen
7 days of receipt of the petition, then the petitioners
8 shall have the authority to set the time, date, and
9 place for the special meeting and to send out the
10 notices for the special meeting in accordance with the
11 requirements of the bylaws. Except as otherwise
12 provided in this section, the meeting for the removal
13 and replacement from office of directors shall be
14 scheduled, noticed, and conducted in accordance with
15 the bylaws of the association;

16 (2) The bylaws may be amended at any time by the vote or
17 written consent of sixty-five per cent of all
18 apartment owners; provided that:

19 (A) Each one of the particulars set forth in this
20 subsection shall be embodied in the bylaws
21 always; [and]



1 (B) Any proposed bylaws with the rationale for the
2 proposal may be submitted by the board of
3 directors or by a volunteer apartment owners'
4 committee. If submitted by that committee, the
5 proposal shall be accompanied by a petition
6 signed by not less than twenty-five per cent of
7 the apartment owners as shown in the
8 association's record of ownership. The proposed
9 bylaws, rationale, and ballots for voting on any
10 proposed bylaw shall be mailed by the board of
11 directors to the owners at the expense of the
12 association for vote or written consent without
13 change within thirty days of the receipt of the
14 petition by the board of directors[-];

15 (C) The vote or written consent required to adopt the
16 proposed bylaw shall not be less than sixty-five
17 per cent of all apartment owners; provided that
18 if at least sixty-five per cent approval of all
19 apartment owners is not obtained by the three
20 hundred sixty-fifth day after the mailing, then
21 the proposed bylaw shall be duly adopted if at



1 least sixty-five per cent of those apartment
2 owners who voted approved the bylaw;
3 (D) To be valid, the vote or written consent must be
4 obtained within three hundred sixty-five days
5 after mailing for a proposed bylaw submitted by
6 either the board of directors or a volunteer
7 apartment owners' committee[-]; provided further
8 that voting shall cease if the required approval
9 is obtained prior to the passage of three hundred
10 sixty-five days after the mailing, upon which the
11 proposed bylaw shall be duly adopted, or if a
12 sufficient percentage have voted in the negative
13 so that passage is unobtainable;
14 (E) If the bylaw is duly adopted, then the board
15 shall cause the bylaw amendment to be recorded in
16 the bureau of conveyances or filed in the land
17 court, as the case may be[-]; and
18 (F) The volunteer apartment owners' committee shall
19 be precluded from submitting a petition for a
20 proposed bylaw that is substantially similar to
21 that which has been previously mailed to the



1 owners within one year after the original
2 petition was submitted to the board.

3 This paragraph shall not preclude any apartment owner
4 or voluntary apartment owners' committee from
5 proposing any bylaw amendment at any annual
6 association meeting;

7 (3) Notices of association meetings, whether annual or
8 special, shall be sent to each member of the
9 association of apartment owners at least fourteen days
10 prior to the meeting and shall contain at least:

11 (A) The date, time, and place of the meeting;

12 (B) The items on the agenda for the meeting; and

13 (C) A standard proxy form authorized by the
14 association, if any;

15 (4) No resident manager or managing agent shall solicit,
16 for use by the manager or managing agent, any proxies
17 from any apartment owner of the association of owners
18 that employs the resident manager or managing agent,
19 nor shall the resident manager or managing agent cast
20 any proxy vote at any association meeting except for
21 the purpose of establishing a quorum. Any board of



1 directors that intends to use association funds to
2 distribute proxies, including the standard proxy form
3 referred to in paragraph (3), shall first post notice
4 of its intent to distribute proxies in prominent
5 locations within the project at least thirty days
6 prior to its distribution of proxies; provided that if
7 the board receives within seven days of the posted
8 notice a request by any owner for use of association
9 funds to solicit proxies accompanied by a statement,
10 the board shall mail to all owners either:

11 (A) A proxy form containing the names of all owners
12 who have requested the use of association funds
13 for soliciting proxies accompanied by their
14 statements; or

15 (B) A proxy form containing no names, but accompanied
16 by a list of names of all owners who have
17 requested the use of association funds for
18 soliciting proxies and their statements.

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



- 1 (5) A director who has a conflict of interest on any issue
2 before the board shall disclose the nature of the
3 conflict of interest prior to a vote on that issue at
4 the board meeting, and the minutes of the meeting
5 shall record the fact that a disclosure was made;
- 6 (6) The apartment owners shall have the irrevocable right,
7 to be exercised by the board of directors, to have
8 access to each apartment from time to time during
9 reasonable hours as may be necessary for the operation
10 of the property or for making emergency repairs
11 therein necessary to prevent damage to the common
12 elements or to another apartment or apartments;
- 13 (7) An owner shall not act as an officer of an association
14 and an employee of the managing agent employed by the
15 association;
- 16 (8) An association's employees shall not engage in selling
17 or renting apartments in the condominium in which they
18 are employed except association-owned units, unless
19 such activity is approved by an affirmative vote of
20 sixty-five per cent of the membership;



- 1 (9) The board of directors shall meet at least once a
2 year. Whenever practicable, notice of all board
3 meetings shall be posted by the resident manager or a
4 member of the board in prominent locations within the
5 project seventy-two hours prior to the meeting or
6 simultaneously with notice to the board of directors;
- 7 (10) Directors shall not expend association funds for their
8 travel, directors' fees, and per diem, unless owners
9 are informed and a majority approve of these expenses;
- 10 (11) Associations at their own expense shall provide all
11 board members with a current copy of the association's
12 declaration, bylaws, house rules, and, annually, a
13 copy of this chapter with amendments;
- 14 (12) The directors may expend association funds, which
15 shall not be deemed to be compensation to the
16 directors, to educate and train themselves in subject
17 areas directly related to their duties and
18 responsibilities as directors; provided that the
19 approved annual operating budget shall include these
20 expenses as separate line items. These expenses may
21 include registration fees, books, videos, tapes, other



1 educational materials, and economy travel expenses.
2 Except for economy travel expenses within the State,
3 all other travel expenses incurred under this
4 subsection shall be subject to the requirements of
5 paragraph (10);

6 (13) A lien created pursuant to section 514A-90 may be
7 enforced by the association in any manner permitted by
8 law, including nonjudicial or power of sale
9 foreclosure procedures authorized by chapter 667; and

10 (14) If the bylaws provide for cumulative voting by the
11 owners, the owners may so vote if an owner gives
12 notice of the owner's intent to cumulatively vote
13 before voting commences.

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

18 SECTION 3. Section 514B-23, Hawaii Revised Statutes, is
19 amended to read as follows:

20 "§514B-23 Amendments to governing instruments. (a) The
21 declaration, bylaws, condominium map, or other constituent



1 documents of any condominium created before July 1, 2006 may be
2 amended to achieve any result permitted by this chapter,
3 regardless of what applicable law provided before July 1, 2006.

4 (b) An amendment to the declaration, bylaws, condominium
5 map or other constituent documents authorized by this section
6 may be adopted by the vote or written consent of a majority of
7 the unit owners; provided that if majority approval is not
8 obtained by the three hundred sixty-fifth day after the mailing
9 required by this subsection, then the proposed amendment shall
10 be duly adopted if at least a majority of the unit owners who
11 voted approved the amendment. Any proposed amendments,
12 rationale, and ballots for voting shall be mailed by the board
13 to the owners at the expense of the association for vote or
14 written consent. To be valid, the vote or written consent must
15 be obtained within three hundred sixty-five days after mailing.
16 Voting shall cease if the required approval is obtained prior to
17 the passage of three hundred sixty-five days, upon which the
18 proposed bylaw shall be duly adopted, or if a sufficient
19 percentage have voted in the negative so that passage is
20 unobtainable; provided that any amendment adopted pursuant to
21 this section shall not invalidate the reserved rights of a



1 developer. If an amendment grants to any person any rights,
2 powers, or privileges permitted by this chapter, all correlative
3 obligations, liabilities, and restrictions in this chapter also
4 apply to that person."

5 SECTION 4. Section 514B-32, Hawaii Revised Statutes, is
6 amended by amending subsection (a) to read as follows:

7 "(a) A declaration shall describe or include the
8 following:

- 9 (1) The land submitted to the condominium property regime;
- 10 (2) The number of the condominium map filed concurrently
11 with the declaration;
- 12 (3) The number of units in the condominium property
13 regime;
- 14 (4) The unit number of each unit and common interest
15 appurtenant to each unit;
- 16 (5) The number of buildings and projects in the
17 condominium property regime, and the number of stories
18 and units in each building;
- 19 (6) The permitted and prohibited uses of each unit;
- 20 (7) To the extent not shown on the condominium map, a
21 description of the location and dimensions of the



- 1 horizontal and vertical boundaries of any unit. Unit
2 boundaries may be defined by physical structures or,
3 if a unit boundary is not defined by a physical
4 structure, by spatial coordinates;
- 5 (8) The condominium property regime's common elements;
- 6 (9) The condominium property regime's limited common
7 elements, if any, and the unit or units to which each
8 limited common element is appurtenant;
- 9 (10) The total percentage of the common interest that is
10 required to approve rebuilding, repairing, or
11 restoring the condominium property regime if it is
12 damaged or destroyed;
- 13 (11) The total percentage of the common interest, and any
14 other approvals or consents, that are required to
15 amend the declaration. Except as otherwise
16 specifically provided in this chapter, and except for
17 any amendments made pursuant to reservations set forth
18 in paragraph (12), ~~[the approval of the owners of at
19 least sixty seven per cent of the common interest
20 shall be required for]~~ all amendments to the
21 declaration[+] shall require, after any proposed



1 amendment, rationale, and ballots for voting are
2 mailed by the board to the owners at the expense of
3 the association for vote or written consent, the vote
4 or written consent of sixty-seven per cent of all unit
5 owners; provided that, to be valid, the vote or
6 written consent must be obtained within three hundred
7 sixty-five days after the mailing; provided further
8 that voting shall cease if the required approval is
9 obtained prior to the passage of three hundred sixty-
10 five days after the mailing, upon which the proposed
11 amendment shall be duly adopted, or if a sufficient
12 percentage have voted in the negative so that passage
13 is unobtainable; provided further that if at least
14 sixty-seven per cent approval of all unit owners is
15 not obtained by the three hundred sixty-fifth day
16 after the mailing, then the amendment shall be duly
17 adopted if at least sixty-seven per cent of those unit
18 owners who voted approved the amendment;

19 (12) Any rights that the developer or others reserve
20 regarding the condominium property regime, including,
21 without limitation, any development rights, and any



1 reservations to modify the declaration or condominium
2 map. An amendment to the declaration made pursuant to
3 the exercise of those reserved rights shall require
4 only the consent or approval, if any, specified in the
5 reservation; and

6 (13) A declaration, subject to the penalties set forth in
7 section 514B-69(b), that the condominium property
8 regime is in compliance with all zoning and building
9 ordinances and codes, and all other permitting
10 requirements pursuant to section 514B-5 and chapter
11 205, including section 205-4.6 where applicable. In
12 the case of a project in the agricultural district
13 classified pursuant to chapter 205, the declaration,
14 subject to the penalties set forth in section 514B-
15 69(b), shall include an additional statement that
16 there are no private restrictions limiting or
17 prohibiting agricultural uses or activities in
18 compliance with section 205-4.6. In the case of a
19 property that includes one or more existing structures
20 being converted to condominium property regime status,



1 the declaration required by this section shall
2 specify:

3 (A) Any variances that have been granted to achieve
4 the compliance; and

5 (B) Whether, as the result of the adoption or
6 amendment of any ordinances or codes, the project
7 presently contains any legal nonconforming
8 conditions, uses, or structures.

9 A property that is registered pursuant to section
10 514B-51 shall instead provide the required declaration
11 pursuant to section 514B-54. If a developer is
12 converting a structure to condominium property regime
13 status and the structure is not in compliance with all
14 zoning and building ordinances and codes, and all
15 other permitting requirements pursuant to section
16 514B-5, and the developer intends to use purchaser's
17 funds pursuant to the requirements of section 514B-92
18 or 514B-93 to cure the violation or violations, then
19 the declaration required by this paragraph may be
20 qualified to identify with specificity each violation



1 and the requirement to cure the violation by a date
2 certain."

3 SECTION 5. Section 514B-108, Hawaii Revised Statutes, is
4 amended by amending subsection (e) to read as follows:

5 "(e) The bylaws may be amended at any time by the vote or
6 written consent of at least sixty-seven per cent of all unit
7 owners[-]; provided that if at least sixty-seven per cent
8 approval of all unit owners is not obtained by the three hundred
9 sixty-fifth day after the mailing required by this subsection,
10 then the proposed bylaw shall be duly adopted if at least sixty-
11 seven per cent of those unit owners who voted approved the
12 bylaw. Any proposed bylaws together with the detailed rationale
13 for the proposal may be submitted by the board or by a volunteer
14 unit owners group. If submitted by that group, the proposal
15 shall be accompanied by a petition signed by not less than
16 twenty-five per cent of the unit owners as shown in the
17 association's record of ownership. The proposed bylaws,
18 rationale, and ballots for voting on any proposed bylaw shall be
19 mailed by the board to the owners at the expense of the
20 association for vote or written consent without change within
21 thirty days of the receipt of the petition by the board. The



1 vote or written consent, to be valid, must be obtained within
2 three hundred sixty-five days after mailing for a proposed bylaw
3 submitted by either the board or a volunteer unit owners group.
4 Voting shall cease if the required approval is obtained prior to
5 the passage of three hundred sixty-five days, upon which the
6 proposed bylaw shall be duly adopted, or if a sufficient
7 percentage have voted in the negative so that passage is
8 unobtainable. If the bylaw is duly adopted, the board shall
9 cause the bylaw amendment to be recorded. The volunteer unit
10 owners group shall be precluded from submitting a petition for a
11 proposed bylaw that is substantially similar to that which has
12 been previously mailed to the owners within three hundred sixty-
13 five days after the original petition was submitted to the
14 board.

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

18 SECTION 6. Statutory material to be repealed is bracketed
19 and stricken. New statutory material is underscored.

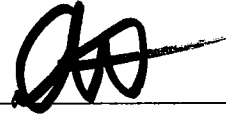
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1 SECTION 7. This Act shall take effect upon its approval.

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INTRODUCED BY: _____

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JAN 23 2017



H.B. NO. 247

Report Title:

Condominiums; Governing Instruments; Declarations; Bylaws; Votes

Description:

Clarifies the procedures to amend condominium association declarations, bylaws, and other governing instruments.

The summary description of legislation appearing on this page is for informational purposes only and is not legislation or evidence of legislative intent.

