
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 apartment owners at the expense of the association of
19 apartment owners for vote or written consent, the vote
20 or written consent of seventy-five per cent of all
21 apartment owners [7]; provided further that for



1 amendments to the declaration of a condominium project
2 that are not of a material adverse nature to owners or
3 do not imperil the viability or stability of the
4 association of apartment owners, the following shall
5 apply:

6 (A) To be valid, the vote or written consent must be
7 obtained within three hundred sixty-five days
8 after the mailing;

9 (B) Voting shall cease if the required approval is
10 obtained prior to the passage of three hundred
11 sixty-five days after the mailing, upon which the
12 proposed amendment shall be duly adopted, or if a
13 sufficient percentage have voted in the negative
14 so that passage is unobtainable; and

15 (C) If at least seventy-five per cent approval of all
16 apartment owners is not obtained by the three
17 hundred sixty-fifth day after the mailing, then
18 the amendment shall be duly adopted if at least
19 seventy-five per cent of those apartment owners
20 who voted approved the amendment;



1 except as otherwise provided in this chapter; provided
2 further that the declarations of condominium projects
3 having five or fewer apartments may provide for the
4 amendment thereof by a vote or written consent of more
5 than seventy-five per cent of all apartment owners;
6 (12) Description as to any additions, deletions,
7 modifications, and reservations as to the property,
8 including without limitation provisions concerning the
9 merger or addition of later phases of the project. To
10 the extent provided in the declaration, an amendment
11 to the declaration that is made to implement those
12 additions, deletions, modifications, reservations, or
13 merger provisions shall require the vote or written
14 consent of only the declarant or such percentage of
15 apartment owners as is provided in the declaration;
16 and
17 (13) A declaration subject to the penalties set forth in
18 section 514A-49(b) that the condominium property
19 regime is in compliance with all zoning and building
20 ordinances and codes, and all other permitting
21 requirements pursuant to section 514A-1.6, and



1 specifying in the case of a property which includes
2 one or more existing structures being converted to
3 condominium status:

4 (A) Any variances which have been granted to achieve
5 such compliance; and

6 (B) Whether, as the result of the adoption or
7 amendment of any ordinances or codes, the project
8 presently contains any legal non-conforming uses
9 or structures;

10 except that a property that is registered pursuant to
11 section 514A-31 shall instead provide this declaration
12 pursuant to [+]section[+] 514A-40."

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

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

17 (1) At any regular or special meeting of the apartment
18 owners, any one or more members of the board of
19 directors may be removed by the apartment owners and
20 successors shall then and there be elected for the
21 remainder of the term to fill the vacancies thus



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



1 scheduled, noticed, and conducted in accordance with
2 the bylaws of the association;

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

6 (A) Each one of the particulars set forth in this
7 subsection shall be embodied in the bylaws
8 always; [and]

9 (B) Any proposed bylaws with the rationale for the
10 proposal may be submitted by the board of
11 directors or by a volunteer apartment owners'
12 committee. If submitted by that committee, the
13 proposal shall be accompanied by a petition
14 signed by not less than twenty-five per cent of
15 the apartment owners as shown in the
16 association's record of ownership. The proposed
17 bylaws, rationale, and ballots for voting on any
18 proposed bylaw shall be mailed by the board of
19 directors to the owners at the expense of the
20 association for vote or written consent without



1 change within thirty days of the receipt of the
2 petition by the board of directors[-];

3 (C) The vote or written consent required to adopt the
4 proposed bylaw shall not be less than sixty-five
5 per cent of all apartment owners; provided that
6 for a proposed bylaw that is not of a material
7 adverse nature to apartment owners or does not
8 imperil the viability or stability of the
9 association of apartment owners, if at least
10 sixty-five per cent approval of all apartment
11 owners is not obtained by the three hundred
12 sixty-fifth day after the mailing, then the
13 proposed bylaw shall be duly adopted if at least
14 sixty-five per cent of those apartment owners who
15 voted approved the bylaw;

16 (D) To be valid, the vote or written consent must be
17 obtained within three hundred sixty-five days
18 after mailing for a proposed bylaw submitted by
19 either the board of directors or a volunteer
20 apartment owners' committee[-]; provided further
21 that for a proposed bylaw that is not of a



1 material adverse nature to apartment owners or
 2 does not imperil the viability or stability of
 3 the association of apartment owners, voting shall
 4 cease if the required approval is obtained prior
 5 to the passage of three hundred sixty-five days
 6 after the mailing, upon which the proposed bylaw
 7 shall be duly adopted, or if a sufficient
 8 percentage have voted in the negative so that
 9 passage is unobtainable;

10 (E) If the bylaw is duly adopted, then the board
 11 shall cause the bylaw amendment to be recorded in
 12 the bureau of conveyances or filed in the land
 13 court, as the case may be [+]; and

14 (F) The volunteer apartment owners' committee shall
 15 be precluded from submitting a petition for a
 16 proposed bylaw that is substantially similar to
 17 that which has been previously mailed to the
 18 owners within one year after the original
 19 petition was submitted to the board.

20 This paragraph shall not preclude any apartment owner
 21 or voluntary apartment owners' committee from



1 proposing any bylaw amendment at any annual
2 association meeting;

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

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

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

9 (C) A standard proxy form authorized by the
10 association, if any;

11 (4) No resident manager or managing agent shall solicit,
12 for use by the manager or managing agent, any proxies
13 from any apartment owner of the association of owners
14 that employs the resident manager or managing agent,
15 nor shall the resident manager or managing agent cast
16 any proxy vote at any association meeting except for
17 the purpose of establishing a quorum. Any board of
18 directors that intends to use association funds to
19 distribute proxies, including the standard proxy form
20 referred to in paragraph (3), shall first post notice
21 of its intent to distribute proxies in prominent



1 locations within the project at least thirty days
2 prior to its distribution of proxies; provided that if
3 the board receives within seven days of the posted
4 notice a request by any owner for use of association
5 funds to solicit proxies accompanied by a statement,
6 the board shall mail to all owners either:

7 (A) A proxy form containing the names of all owners
8 who have requested the use of association funds
9 for soliciting proxies accompanied by their
10 statements; or

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

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

18 (5) A director who has a conflict of interest on any issue
19 before the board shall disclose the nature of the
20 conflict of interest prior to a vote on that issue at



- 1 the board meeting, and the minutes of the meeting
2 shall record the fact that a disclosure was made;
- 3 (6) The apartment owners shall have the irrevocable right,
4 to be exercised by the board of directors, to have
5 access to each apartment from time to time during
6 reasonable hours as may be necessary for the operation
7 of the property or for making emergency repairs
8 therein necessary to prevent damage to the common
9 elements or to another apartment or apartments;
- 10 (7) An owner shall not act as an officer of an association
11 and an employee of the managing agent employed by the
12 association;
- 13 (8) An association's employees shall not engage in selling
14 or renting apartments in the condominium in which they
15 are employed except association-owned units, unless
16 such activity is approved by an affirmative vote of
17 sixty-five per cent of the membership;
- 18 (9) The board of directors shall meet at least once a
19 year. Whenever practicable, notice of all board
20 meetings shall be posted by the resident manager or a
21 member of the board in prominent locations within the



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



1 subsection shall be subject to the requirements of
2 paragraph (10);

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

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

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

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

17 "§514B-23 **Amendments to governing instruments.** (a) The
18 declaration, bylaws, condominium map, or other constituent
19 documents of any condominium created before July 1, 2006 may be
20 amended to achieve any result permitted by this chapter,
21 regardless of what applicable law provided before July 1, 2006.



1 (b) An amendment to the declaration, bylaws, condominium
2 map or other constituent documents authorized by this section
3 may be adopted by the vote or written consent of a majority of
4 the unit owners; provided that for amendments to the
5 declaration, bylaws, condominium map, or other constituent
6 documents that are not of a material adverse nature to unit
7 owners or do not imperil the viability or stability of the
8 association, the following shall apply:

- 9 (1) If majority approval is not obtained by the three
10 hundred sixty-fifth day after the mailing required by
11 this subsection, then the proposed amendment shall be
12 duly adopted if at least a majority of the unit owners
13 who voted approved the amendment;
- 14 (2) Any proposed amendments, rationale, and ballots for
15 voting shall be mailed by the board to the owners at
16 the expense of the association for vote or written
17 consent;
- 18 (3) To be valid, the vote or written consent must be
19 obtained within three hundred sixty-five days after
20 mailing; and



1 (4) Voting shall cease if the required approval is
2 obtained prior to the passage of three hundred sixty-
3 five days, upon which the proposed amendment shall be
4 duly adopted, or if a sufficient percentage have voted
5 in the negative so that passage is unobtainable;
6 provided that any amendment adopted pursuant to this section
7 shall not invalidate the reserved rights of a developer. If an
8 amendment grants to any person any rights, powers, or privileges
9 permitted by this chapter, all correlative obligations,
10 liabilities, and restrictions in this chapter also apply to that
11 person."

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

14 "(a) A declaration shall describe or include the
15 following:

- 16 (1) The land submitted to the condominium property regime;
17 (2) The number of the condominium map filed concurrently
18 with the declaration;
19 (3) The number of units in the condominium property
20 regime;



- 1 (4) The unit number of each unit and common interest
2 appurtenant to each unit;
- 3 (5) The number of buildings and projects in the
4 condominium property regime, and the number of stories
5 and units in each building;
- 6 (6) The permitted and prohibited uses of each unit;
- 7 (7) To the extent not shown on the condominium map, a
8 description of the location and dimensions of the
9 horizontal and vertical boundaries of any unit. Unit
10 boundaries may be defined by physical structures or,
11 if a unit boundary is not defined by a physical
12 structure, by spatial coordinates;
- 13 (8) The condominium property regime's common elements;
- 14 (9) The condominium property regime's limited common
15 elements, if any, and the unit or units to which each
16 limited common element is appurtenant;
- 17 (10) The total percentage of the common interest that is
18 required to approve rebuilding, repairing, or
19 restoring the condominium property regime if it is
20 damaged or destroyed;



1 (11) The total percentage of the common interest, and any
2 other approvals or consents, that are required to
3 amend the declaration. Except as otherwise
4 specifically provided in this chapter, and except for
5 any amendments made pursuant to reservations set forth
6 in paragraph (12), [~~the approval of the owners of at~~
7 ~~least sixty seven per cent of the common interest~~
8 ~~shall be required for]~~ all amendments to the
9 declaration[+] shall require, after any proposed
10 amendment, rationale, and ballots for voting are
11 mailed by the board to the owners at the expense of
12 the association for vote or written consent, the vote
13 or written consent of sixty-seven per cent of all unit
14 owners; provided that for amendments to the
15 declaration that are not of a material adverse nature
16 to unit owners or do not imperil the viability or
17 stability of the association, the following shall
18 apply:
19 (A) To be valid, the vote or written consent must be
20 obtained within three hundred sixty-five days
21 after the mailing;



1 (B) Voting shall cease if the required approval is
2 obtained prior to the passage of three hundred
3 sixty-five days after the mailing, upon which the
4 proposed amendment shall be duly adopted, or if a
5 sufficient percentage have voted in the negative
6 so that passage is unobtainable; and

7 (C) If at least sixty-seven per cent approval of all
8 unit owners is not obtained by the three hundred
9 sixty-fifth day after the mailing, then the
10 amendment shall be duly adopted if at least
11 sixty-seven per cent of those unit owners who
12 voted approved the amendment;

13 (12) Any rights that the developer or others reserve
14 regarding the condominium property regime, including,
15 without limitation, any development rights, and any
16 reservations to modify the declaration or condominium
17 map. An amendment to the declaration made pursuant to
18 the exercise of those reserved rights shall require
19 only the consent or approval, if any, specified in the
20 reservation; and



1 (13) A declaration, subject to the penalties set forth in
2 section 514B-69(b), that the condominium property
3 regime is in compliance with all zoning and building
4 ordinances and codes, and all other permitting
5 requirements pursuant to section 514B-5 and chapter
6 205, including section 205-4.6 where applicable. In
7 the case of a project in the agricultural district
8 classified pursuant to chapter 205, the declaration,
9 subject to the penalties set forth in section 514B-
10 69(b), shall include an additional statement that
11 there are no private restrictions limiting or
12 prohibiting agricultural uses or activities in
13 compliance with section 205-4.6. In the case of a
14 property that includes one or more existing structures
15 being converted to condominium property regime status,
16 the declaration required by this section shall
17 specify:
18 (A) Any variances that have been granted to achieve
19 the compliance; and
20 (B) Whether, as the result of the adoption or
21 amendment of any ordinances or codes, the project



1 presently contains any legal nonconforming
2 conditions, uses, or structures.

3 A property that is registered pursuant to section
4 514B-51 shall instead provide the required declaration
5 pursuant to section 514B-54. If a developer is
6 converting a structure to condominium property regime
7 status and the structure is not in compliance with all
8 zoning and building ordinances and codes, and all
9 other permitting requirements pursuant to section
10 514B-5, and the developer intends to use purchaser's
11 funds pursuant to the requirements of section 514B-92
12 or 514B-93 to cure the violation or violations, then
13 the declaration required by this paragraph may be
14 qualified to identify with specificity each violation
15 and the requirement to cure the violation by a date
16 certain."

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

19 "(e) The bylaws may be amended at any time by the vote or
20 written consent of at least sixty-seven per cent of all unit
21 owners[-]; provided that for amendments to the bylaws that are



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



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

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

15 SECTION 6. Statutory material to be repealed is bracketed
16 and stricken. New statutory material is underscored.

17 SECTION 7. This Act shall take effect on July 1, 2050.

18



Report Title:

Condominiums; Governing Instruments; Declarations; Bylaws; Votes

Description:

Clarifies the procedures to amend condominium association declarations, bylaws, and other governing instruments that are not of a material adverse nature to condominium owners or do not imperil the viability or stability of the condominium association. Effective 7/1/2050. (SD1)

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

