
A BILL FOR AN ACT

RELATING TO CONDOMINIUMS.

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

1 SECTION 1. The legislature finds that existing law on
2 voting pursuant to a proxy at a meeting of a condominium
3 association specifies that a standard proxy form must contain
4 boxes for a condominium owner to check and indicate how a proxy
5 is given. However, proxy forms may sometimes be returned to an
6 association's secretary or managing agent with more than one box
7 checked, or with nothing marked on the proxy form. This
8 situation may lead to confusion over how the proxy should be
9 counted.

10 Accordingly, the purpose of this Act is to clarify that if
11 a proxy is a standard proxy form authorized by an association,
12 and the proxy is returned with no box checked or more than one
13 box checked, the proxy shall be counted for quorum purposes
14 only.

15 SECTION 2. Section 514B-123, Hawaii Revised Statutes, is
16 amended to read as follows:

17 "§514B-123 Association meetings; voting; proxies. (a) If
18 only one of several owners of a unit is present at a meeting of



1 the association, that owner is entitled to cast all the votes
2 allocated to that unit. If more than one of the owners is
3 present, the votes allocated to that unit may be cast only in
4 accordance with the agreement of a majority in interest of the
5 owners, unless the declaration or bylaws expressly provide
6 otherwise. There is majority agreement if any one of the owners
7 casts the votes allocated to that unit without protest being
8 made by any of the other owners of the unit to the person
9 presiding over the meeting before the polls are closed.

10 (b) Votes allocated to a unit may be cast pursuant to a
11 proxy duly executed by a unit owner. A unit owner may vote by
12 mail or electronic transmission through a duly executed proxy.
13 If a unit is owned by more than one person, each owner of the
14 unit may vote or register protest to the casting of votes by the
15 other owners of the unit through a duly executed proxy. In the
16 absence of protest, any owner may cast the votes allocated to
17 the unit by proxy. A unit owner may revoke a proxy given
18 pursuant to this section only by actual notice of revocation to
19 the secretary of the association or the managing agent. A proxy
20 is void if it purports to be revocable without notice.



1 (c) No votes allocated to a unit owned by the association
2 may be cast for the election or reelection of directors.

3 (d) A proxy, to be valid, shall:

4 (1) Be delivered to the secretary of the association or
5 the managing agent, if any, no later than 4:30 p.m. on
6 the second business day prior to the date of the
7 meeting to which it pertains; and

8 (2) Contain at least the name of the association, the date
9 of the meeting of the association, the printed names
10 and signatures of the persons giving the proxy, the
11 unit numbers for which the proxy is given, the names
12 of persons to whom the proxy is given, and the date
13 that the proxy is given[~~+~~and].

14 [~~3~~] (e) If [~~it~~] a proxy is a standard proxy form
15 authorized by the association, the proxy shall comply with the
16 following additional requirements:

17 (1) The proxy shall contain boxes wherein the owner [~~has~~
18 ~~indicated~~] may indicate that the proxy is given:

19 (A) For quorum purposes only;

20 (B) To the individual whose name is printed on a line
21 next to this box;



1 (C) To the board as a whole and that the vote is to
2 be made on the basis of the preference of the
3 majority of the directors present at the meeting;
4 or

5 (D) To those directors present at the meeting with
6 the vote to be shared with each director
7 receiving an equal percentage ~~[-]~~;
8 provided that if the proxy is returned with no box or
9 more than one of the boxes in subparagraphs (A)
10 through (D) checked, the proxy shall be counted for
11 quorum purposes only; and

12 (2) The proxy form shall also contain a box wherein the
13 owner may indicate that the owner wishes to obtain a
14 copy of the annual audit report required by section
15 514B-150.

16 ~~[-e)]~~ (f) A proxy shall only be valid for the meeting to
17 which the proxy pertains and its adjournments, may designate any
18 person as proxy, and may be limited as the unit owner desires
19 and indicates; provided that no proxy shall be irrevocable
20 unless coupled with a financial interest in the unit.



1 ~~[(f)]~~ (g) A copy, facsimile telecommunication, or other
2 reliable reproduction of a proxy may be used in lieu of the
3 original proxy for any and all purposes for which the original
4 proxy could be used; provided that any copy, facsimile
5 telecommunication, or other reproduction shall be a complete
6 reproduction of the entire original proxy.

7 ~~[(g)]~~ (h) Nothing in this section shall affect the holder
8 of any proxy under a first mortgage of record encumbering a unit
9 or under an agreement of sale affecting a unit.

10 ~~[(h)]~~ (i) With respect to the use of association funds to
11 distribute proxies:

12 (1) Any board that intends to use association funds to
13 distribute proxies, including the standard proxy form
14 referred to in subsection ~~[(d)(3)]~~ (e), shall first
15 post notice of its intent to distribute proxies in
16 prominent locations within the project at least
17 twenty-one days before its distribution of proxies.

18 If the board receives within seven days of the posted
19 notice a request by any owner for use of association
20 funds to solicit proxies accompanied by a statement,
21 the board shall mail to all owners either:



1 (A) A proxy form containing the names of all owners
2 who have requested the use of association funds
3 for soliciting proxies accompanied by their
4 statements; or

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

9 The statement, which shall be limited to black text on
10 white paper, shall not exceed one single-sided
11 8-1/2" x 11" page, indicating the owner's
12 qualifications to serve on the board or reasons for
13 wanting to receive proxies; and

14 (2) A board or member of the board may use association
15 funds to solicit proxies as part of the distribution
16 of proxies. If a member of the board, as an
17 individual, seeks to solicit proxies using association
18 funds, the board member shall proceed as a unit owner
19 under paragraph (1).

20 ~~(i)~~ (j) No managing agent or resident manager, or their
21 employees, shall solicit, for use by the managing agent or



1 resident manager, any proxies from any unit owner of the
2 association that retains the managing agent or employs the
3 resident manager, nor shall the managing agent or resident
4 manager cast any proxy vote at any association meeting except
5 for the purpose of establishing a quorum.

6 ~~[(j)]~~ (k) No board shall adopt any rule prohibiting the
7 solicitation of proxies or distribution of materials relating to
8 association matters on the common elements by unit owners;
9 provided that a board may adopt rules regulating reasonable
10 time, place, and manner of the solicitations or distributions,
11 or both."

12 SECTION 3. Section 514B-150, Hawaii Revised Statutes, is
13 amended by amending subsection (b) to read as follows:

14 "(b) The board shall make available a copy of the annual
15 audit to each unit owner at least thirty days prior to the
16 annual meeting which follows the end of the fiscal year. The
17 board shall not be required to submit a copy of the annual audit
18 report to an owner if the proxy form issued pursuant to section
19 ~~[514B-123(d)]~~ 514B-123(e) is not marked to indicate that the
20 owner wishes to obtain a copy of the report. If the annual



1 audit has not been completed by that date, the board shall make
2 available:

- 3 (1) An unaudited year end financial statement for the
4 fiscal year to each unit owner at least thirty days
5 prior to the annual meeting; and
- 6 (2) The annual audit to all owners at the annual meeting,
7 or as soon as the audit is completed, but not later
8 than six months after the annual meeting."

9 SECTION 4. Statutory material to be repealed is bracketed
10 and stricken. New statutory material is underscored.

11 SECTION 5. This Act shall take effect upon its approval.



Report Title:

Condominiums; Associations; Meetings; Voting; Proxies

Description:

Clarifies that if a proxy is a standard proxy form authorized by a condominium association, and the proxy is returned with no box checked or more than one box checked, the proxy shall be counted for quorum purposes only. (HB239 CD1)

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