

---

---

# A BILL FOR AN ACT

RELATING TO CONDOMINIUM ASSOCIATIONS.

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

- 1           SECTION 1. Section 514B-32, Hawaii Revised Statutes, is  
2 amended by amending subsection (a) to read as follows:  
3           "(a) A declaration shall describe or include the  
4 following:  
5           (1) The land submitted to the condominium property regime;  
6           (2) The number of the condominium map filed concurrently  
7                 with the declaration;  
8           (3) The number of units in the condominium property  
9                 regime;  
10          (4) The unit number of each unit and common interest  
11                 appurtenant to each unit;  
12          (5) The number of buildings and projects in the  
13                 condominium property regime, and the number of stories  
14                 and units in each building;  
15          (6) The permitted and prohibited uses of each unit;  
16          (7) To the extent not shown on the condominium map, a  
17                 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]~~  
19 declaration may be amended at any time by the vote or  
20 written consent of unit owners representing at least  
21 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



1           there are no private restrictions limiting or  
2           prohibiting agricultural uses or activities in  
3           compliance with section 205-4.6. In the case of a  
4           property that includes one or more existing structures  
5           being converted to condominium property regime status,  
6           the declaration required by this section shall  
7           specify:

8           (A) Any variances that have been granted to achieve  
9           the compliance; and

10          (B) Whether, as the result of the adoption or  
11          amendment of any ordinances or codes, the project  
12          presently contains any legal nonconforming  
13          conditions, uses, or structures.

14          A property that is registered pursuant to section  
15          514B-51 shall instead provide the required declaration  
16          pursuant to section 514B-54. If a developer is  
17          converting a structure to condominium property regime  
18          status and the structure is not in compliance with all  
19          zoning and building ordinances and codes, and all  
20          other permitting requirements pursuant to section  
21          514B-5, and the developer intends to use purchaser's



1 funds pursuant to the requirements of section 514B-92  
2 or 514B-93 to cure the violation or violations, then  
3 the declaration required by this paragraph may be  
4 qualified to identify with specificity each violation  
5 and the requirement to cure the violation by a date  
6 certain."

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

9 "(a) A developer's public report shall contain:

- 10 (1) The name and address of the project, and the name,  
11 address, telephone number, and electronic mail  
12 address, if any, of the developer or the developer's  
13 agent;
- 14 (2) A statement of the deadline, pursuant to section  
15 514B-89, for completion of construction or, in the  
16 case of a conversion, for the completion of any  
17 repairs required to comply with section 514B-5, and  
18 the remedies available to the purchaser, including but  
19 not limited to cancellation of the sales contract, if  
20 the completion of construction or repairs does not  
21 occur on or before the completion deadline;



- 1 (3) A breakdown of the annual maintenance fees, which  
2 includes the annual reserve contributions based on a  
3 reserve study, and the monthly estimated cost for each  
4 unit, certified to have been based on generally  
5 accepted accounting principles, and a statement  
6 regarding when a purchaser shall become obligated to  
7 start paying the fees pursuant to section 514B-41(b);
- 8 (4) A description of all warranties for the individual  
9 units and the common elements, including the date of  
10 initiation and expiration of any such warranties, or a  
11 statement that no warranties exist;
- 12 (5) A summary of the permitted uses of the units and, if  
13 applicable, the number of units planned to be devoted  
14 to a particular use;
- 15 (6) A description of any development rights reserved to  
16 the developer or others;
- 17 (7) A declaration, subject to the penalties set forth in  
18 section 514B-69(b), that the project is in compliance  
19 with all county zoning and building ordinances and  
20 codes, chapter 205, including section 205-4.6 where  
21 applicable, and all other county permitting



1 requirements applicable to the project, pursuant to  
 2 sections 514B-5 and 514B-32(a)(13); and  
 3 (8) Any other facts, documents, or information that would  
 4 have a material impact on the use or value of a unit  
 5 or any appurtenant limited common elements or  
 6 amenities of the project available for an owner's use,  
 7 or that may be required by the commission."

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

10 "(e) The bylaws may be amended at any time by the vote or  
 11 written consent of at least sixty-seven per cent of all unit  
 12 owners. Any proposed bylaws together with the detailed  
 13 rationale for the proposal may be submitted by the board or by a  
 14 volunteer unit owners group. If submitted by that group, the  
 15 proposal shall be accompanied by a petition signed and dated by  
 16 not less than twenty-five per cent of the unit owners as shown  
 17 in the association's record of ownership. The petition shall be  
 18 valid only if submitted within one hundred twenty days of the  
 19 earliest signature. The proposed bylaws, rationale, and ballots  
 20 for voting on any proposed bylaw shall be mailed by the board to  
 21 the owners at the expense of the association for vote or written



1 consent without change within thirty days of the receipt of the  
2 petition by the board. The vote or written consent, to be  
3 valid, [~~must~~] shall be obtained within three hundred sixty-five  
4 days after mailing for a proposed bylaw submitted by either the  
5 board or a volunteer unit owners group. 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 4. Section 514B-121, Hawaii Revised Statutes, is  
16 amended as follows:

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

18 "(b) Notwithstanding any other provision of this chapter,  
19 except as provided in subsection (e), or the declaration or  
20 bylaws of a condominium to the contrary, at any association  
21 meeting the board may direct the use of an electronic voting





1 device regardless of whether a secret ballot is used or  
2 required. Except as provided in subsection (e), the use shall  
3 be subject to the following:

4 (1) The electronic voting device and all associated  
5 equipment shall be isolated from any connection to an  
6 external network, including the Internet[+], or shall  
7 use a form of encryption comparable to that used for  
8 secured internet web browsers;

9 (2) The board shall establish reasonable procedures to  
10 provide for the secrecy and integrity of the unit  
11 owners' votes, including but not limited to procedures  
12 that ensure the availability of a printed audit trail  
13 containing:

14 (A) The reference number or internet address of the  
15 electronic voting device;

16 (B) Each common interest voted; and

17 (C) The vote that was tabulated;

18 (3) A copy of the printed audit trail shall be available  
19 to owners after the meeting in the same manner  
20 provided by sections 514B-154 and 514B-154.5; and



1 (4) A copy of the procedures established pursuant to  
2 paragraph (2) shall be available at no charge to any  
3 owner and a copy shall be available at any meeting at  
4 which the association uses an electronic voting  
5 device.

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

8 (c) Special meetings of the association may be called by  
9 the president, a majority of the board, or by a petition to the  
10 secretary or managing agent signed and dated by not less than  
11 twenty-five per cent of the unit owners as shown in the  
12 association's record of ownership; provided that if the  
13 secretary or managing agent fails to send out the notices for  
14 the special meeting within fourteen days of receipt of the  
15 petition, the petitioners shall have the authority to set the  
16 time, date, and place for the special meeting and to send out  
17 the notices and proxies for the special meeting at the  
18 association's expense in accordance with the requirements of the  
19 bylaws and of this part; provided further that a special meeting  
20 based upon a petition to the secretary or managing agent shall  
21 be set no later than sixty days from receipt of the petition.



1 The petition shall be valid only if submitted within one hundred  
2 twenty days of the earliest signature."

3 2. By amending subsection (e) to read:

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

11 (1) During any period in which a state of emergency or  
12 local state of emergency, declared pursuant to chapter  
13 127A, is in effect in the county in which the  
14 condominium is located;

15 (2) For any association meeting for which notice was given  
16 while a state of emergency or local state of  
17 emergency, declared pursuant to chapter 127A, was in  
18 effect for the county in which the condominium is  
19 located but is no longer in effect as of the date of  
20 the meeting; provided that the meeting is held within



1 sixty days of the date the notice was first given;

2 [~~or~~]

3 (3) For any electronic, machine, or mail voting for which  
4 notice of voting has been sent; provided that the  
5 electronic, machine, or mail voting deadline is within  
6 sixty days of the date the notice was first sent;

7 (4) Whenever approved in advance by:

8 (A) Written consent of a majority of unit owners; or

9 (B) Majority vote at an association meeting; or

10 [~~(3)~~] (5) Whenever otherwise authorized in an association's  
11 declaration or bylaws.

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

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

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



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

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

10          "(d) A proxy, to be valid, shall:

11           (1) Be delivered to the secretary of the association or  
12           the managing agent, if any, no later than 4:30 p.m.  
13           Hawaii-Aleutian Standard Time on the second business  
14           day prior to the date of the meeting to which it  
15           pertains; and

16           (2) Contain at least the name of the association, the date  
17           of the meeting of the association, the printed names  
18           and signatures of the persons giving the proxy, the  
19           unit numbers for which the proxy is given, the names  
20           of persons to whom the proxy is given, and the date  
21           that the proxy is given."



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

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

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

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

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

17 1. By amending subsection (a) to read:

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

- 20 (1) The estimated revenues and operating expenses of the  
21 association;

- 1 (2) Information as to whether the budget has been prepared  
2 on a cash or accrual basis;
- 3 (3) The total replacement reserves of the association as  
4 of the date of the budget;
- 5 (4) The estimated replacement reserves that the  
6 association will require to maintain the property  
7 based on a reserve study performed by the association;  
8 provided that the reserve study shall be reviewed by  
9 an independent reserve study preparer; provided  
10 further that the reserve study shall be reviewed or  
11 updated at least every three years;
- 12 (5) A general explanation of how the estimated replacement  
13 reserves are computed;
- 14 (6) The amount the association must collect for the fiscal  
15 year to fund the estimated replacement reserves; and
- 16 (7) Information as to whether the amount the association  
17 must collect for the fiscal year to fund the estimated  
18 replacement reserves was calculated using a per cent  
19 funded or cash flow plan. The method or plan shall  
20 not circumvent the estimated replacement reserves



1 amount determined by the reserve study pursuant to  
2 paragraph (4)."

3 2. By amending subsection (h) to read:

4 "(h) As used in this section:

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

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

16 "Emergency situation" means any extraordinary expenses:

- 17 (1) Required by an order of a court;
- 18 (2) Necessary to repair or maintain any part of the  
19 property for which the association is responsible  
20 where a threat to personal safety on the property is  
21 discovered;





1 (3) Necessary to repair any part of the property for which  
2 the association is responsible that could not have  
3 been reasonably foreseen by the board in preparing and  
4 distributing the annual operating budget;

5 (4) Necessary to respond to any legal or administrative  
6 proceeding brought against the association that could  
7 not have been reasonably foreseen by the board in  
8 preparing and distributing the annual operating  
9 budget; or

10 (5) Necessary for the association to obtain adequate  
11 insurance for the property [~~which~~] that the  
12 association must insure.

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

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



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

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

6 SECTION 11. This Act shall take effect on January 1, 2023.



**Report Title:**

Condominium Associations; Unit Owners; Declaration; Notice;  
Voting; Petitions; Meetings; Reserve Study; Cash Flow Plans

**Description:**

Clarifies that sixty-seven per cent of unit owners may amend a condominium declaration at any time by vote or written consent, unless the declaration specifies a higher percentage. Requires developers to include annual reserve contributions based on a reserve study. Clarifies time and date requirements for petitions to amend bylaws and call for special meetings; electronic, machine, and mail voting; time frame for approval of minutes; and board meeting participation. Expands when electronic, machine, and mail voting is authorized. Requires a condominium association's reserve study to be reviewed by an independent reserve study preparer and reviewed or updated at least every three years. Specifies that cash flow plans be based on thirty-year projections. Effective 1/1/2023. (CD1)

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

