

JAN 20 2023

A BILL FOR AN ACT

RELATING TO PROPERTY MANAGEMENT.

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

1 SECTION 1. Chapter 467, Hawaii Revised Statutes, is
2 amended by adding a new section to be appropriately designated
3 and to read as follows:

4 "§467- Training and certification program. (a) The
5 commission shall establish and administer a training and
6 certification program to ensure that every member of a
7 cooperative housing corporation board of directors, planned
8 community association board of directors, and condominium
9 association board understands the board member's legal and
10 fiduciary obligations pursuant to chapters 421I, 421J, and 514B,
11 respectively.

12 (b) The department may adopt rules, pursuant to chapter
13 91, to effectuate the purpose of this section."

14 SECTION 2. Section 421I-3, Hawaii Revised Statutes, is
15 amended to read as follows:

16 "[+]§421I-3[+] Board of directors; election. (a) A
17 meeting of the corporation for the purpose of electing the board



1 of directors shall be held not later than one hundred eighty
2 days after the first conveyance of a dwelling unit to a
3 shareholder, if at least forty per cent of the dwelling units
4 have been conveyed by that time. If forty per cent of the
5 dwelling units have not been conveyed within one year after the
6 first conveyance, the meeting of the corporation may be held
7 upon the call of the owners of at least ten per cent of the
8 shares by a petition presented to the secretary of the
9 corporation.

10 (b) Every member of the board of directors shall be:

11 (1) A shareholder of the cooperation;

12 (2) A spouse of a shareholder; or

13 (3) A trust beneficiary, if the shareholder is a trustee.

14 (c) Each dwelling unit shall have only one representative
15 on the board of directors.

16 (d) Within one year of election to the board of directors,
17 or within one year of the effective date of this Act, each board
18 member shall attend the training and certification course
19 provided by the real estate commission."

20 SECTION 3. Section 421J-3, Hawaii Revised Statutes, is
21 amended to read as follows:



1 "~~§~~421J-3~~§~~ **Board of directors.** (a) Every member of
2 the board of directors shall be a member of the association.
3 However, a developer may appoint or elect directors pursuant to
4 any special voting rights or power of appointment reserved to
5 the master developer.

6 (b) The board of directors shall be composed of the number
7 and group of persons specified in the association documents.
8 There shall not be more than one representative on the board of
9 directors from any one unit that is owned by any person other
10 than the master developer or declarant.

11 (c) Within one year of appointment or election to the
12 board of directors, or within one year of the effective date of
13 this Act, each board member shall attend the training and
14 certification course provided by the real estate commission."

15 SECTION 4. Section 514B-106, Hawaii Revised Statutes, is
16 amended to read as follows:

17 "**§514B-106 Board; powers and duties.** (a) Except as
18 provided in the declaration, the bylaws, subsection (b), or
19 other provisions of this chapter, the board may act in all
20 instances on behalf of the association. In the performance of
21 their duties, officers and members of the board shall owe the



1 association a fiduciary duty and exercise the degree of care and
2 loyalty required of an officer or director of a corporation
3 organized under chapter 414D. Any violation by a board or its
4 officers or members of the mandatory provisions of section
5 514B-161 or 514B-162 may constitute a violation of the fiduciary
6 duty owed pursuant to this subsection; provided that a board
7 member may avoid liability under this subsection by indicating
8 in writing the board member's disagreement with such board
9 action or rescinding or withdrawing the violating conduct within
10 forty-five days of the occurrence of the initial violation.

11 (b) The board may not act on behalf of the association to
12 amend the declaration or bylaws (sections 514B-32(a)(11) and
13 514B-108(b)(7)), to remove the condominium from the provisions
14 of this chapter (section 514B-47), or to elect members of the
15 board or determine the qualifications, powers and duties, or
16 terms of office of board members (subsection (e)); provided that
17 nothing in this subsection shall be construed to prohibit board
18 members from voting proxies (section 514B-123) to elect members
19 of the board; provided further that notwithstanding anything to
20 the contrary in the declaration or bylaws, the board may only
21 fill vacancies in its membership to serve until the next annual



1 or duly noticed special association meeting. Notice of a
2 special association meeting to fill vacancies shall include
3 notice of the election. Any special association meeting to fill
4 vacancies shall be held on a date that allows sufficient time
5 for owners to declare their intention to run for election and to
6 solicit proxies for that purpose.

7 (c) Within thirty days after the adoption of any proposed
8 budget for the condominium, the board shall make available a
9 copy of the budget to all the unit owners and shall notify each
10 unit owner that the unit owner may request a copy of the budget.

11 (d) The declaration may provide for a period of developer
12 control of the association, during which a developer, or persons
13 designated by the developer, may appoint and remove the officers
14 and members of the board. Regardless of the period provided in
15 the declaration, a period of developer control terminates no
16 later than the earlier of:

17 (1) Sixty days after conveyance of seventy-five per cent
18 of the common interest appurtenant to units that may
19 be created to unit owners other than a developer or
20 affiliate of the developer;



- 1 (2) Two years after the developer has ceased to offer
- 2 units for sale in the ordinary course of business;
- 3 (3) Two years after any right to add new units was last
- 4 exercised; or
- 5 (4) The day the developer, after giving written notice to
- 6 unit owners, records an instrument voluntarily
- 7 surrendering all rights to control activities of the
- 8 association.

9 A developer may voluntarily surrender the right to appoint and
10 remove officers and members of the board before termination of
11 that period, but in that event the developer may require, for
12 the duration of the period of developer control, that specified
13 actions of the association or board, as described in a recorded
14 instrument executed by the developer, be approved by the
15 developer before they become effective.

16 (e) Not later than the termination of any period of
17 developer control, the unit owners shall elect a board of at
18 least three members; provided that projects created after
19 May 18, 1984, with one hundred or more individual units, shall
20 have an elected board of at least nine members unless the
21 membership has amended the bylaws to reduce the number of



1 directors; and provided further that projects with more than one
2 hundred individual units where at least seventy per cent of the
3 unit owners do not reside at the project may amend the bylaws to
4 reduce the board to as few as five members by the written
5 consent of a majority of the unit owners or the vote of a
6 majority of a quorum at any annual meeting or special meeting
7 called for that purpose. The association may rely on its
8 membership records in determining whether a unit is owner-
9 occupied. A decrease in the number of directors shall not
10 deprive an incumbent director of any remaining term of office.

11 (f) At any regular or special meeting of the association,
12 any member of the board may be removed and successors shall be
13 elected for the remainder of the term to fill the vacancies thus
14 created. The removal and replacement shall be by a vote of a
15 majority of the unit owners and, otherwise, in accordance with
16 all applicable requirements and procedures in the bylaws for the
17 removal and replacement of directors and, if removal and
18 replacement is to occur at a special meeting, section
19 514B-121(c).

20 (g) Within one year of election to the board, or within
21 one year of the effective date of this Act, each board member



1 shall attend the training and certification course provided by
2 the real estate commission."

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

5 SECTION 6. This Act shall take effect upon its approval.

6

INTRODUCED BY: *Charles F. Johnson*



S.B. NO. 856

Report Title:

DCCA; Real Estate Commission; Property Management; Board of Directors; Training and Certification

Description:

Requires each member of a cooperative housing corporation board of directors, planned community association board of directors, and condominium association board to attend a training and certification course provided by the Real Estate Commission within one year of appointment or election or one year of the effective date of the Act. Requires the Real Estate Commission to establish and administer a training and certification program to ensure that every board member understands the member's legal and fiduciary obligations pursuant to chapters 421I, 421J, and 514B, Hawaii Revised Statutes.

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

