A BILL FOR AN ACT

RELATING TO CONDOMINIUMS.

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

1	SECT	ION 1. Section 514B-104, Hawaii Revised Statutes, is
2	amended b	y amending subsection (a) to read as follows:
3	"(a)	Except as provided in section 514B-105, and subject
4	to the pr	ovisions of the declaration and bylaws, the
5	associati	on, even if unincorporated, may:
6	(1)	Adopt and amend the declaration, bylaws, and rules and
7		regulations;
8	(2)	Adopt and amend budgets for revenues, expenditures,
9		and reserves and collect assessments for common
10		expenses from unit owners, subject to section
11		514B-148;
12	(3)	Hire and discharge managing agents and other
13		independent contractors, agents, and employees;
14	(4)	Institute, defend, or intervene in litigation or
15		administrative proceedings in its own name on behalf
16		of itself or two or more unit owners on matters
17		affecting the condominium. For the purposes of



1		actions under chapter 480, associations shall be
2		deemed to be "consumers";
3	(5)	Make contracts and incur liabilities;
4	(6)	Regulate the use, maintenance, repair, replacement,
5		and modification of common elements;
6	(7)	Cause additional improvements to be made as a part of
7		the common elements;
8	(8)	Acquire, hold, encumber, and convey in its own name
9		any right, title, or interest to real or personal
10		property; provided that:
11		(A) Designation of additional areas to be common
12		elements or subject to common expenses after the
13		initial filing of the declaration or bylaws shall
14		require the approval of at least sixty-seven per
15		cent of the unit owners;
16		(B) If the developer discloses to the initial buyer
17		in writing that additional areas will be
18		designated as common elements whether pursuant to
19		an incremental or phased project or otherwise,
20		the requirements of this paragraph shall not
21		apply as to those additional areas; and



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1		(C) The requirements of this paragraph shall not
2		apply to the purchase of a unit for a resident
3		manager, which may be purchased with the approval
4		of the board;
5	(9)	Subject to section 514B-38, grant easements, leases,
6		licenses, and concessions through or over the common
7		elements and permit encroachments on the common
8		elements;
9	(10)	Impose and receive any payments, fees, or charges for
10		the use, rental, or operation of the common elements,
11		other than limited common elements described in
12		section 514B-35(2) and (4), and for services provided
13		to unit owners;
14	(11)	Impose charges and penalties, including late fees and
15		interest, for late payment of assessments and levy
16		reasonable fines for violations of the declaration,
17		bylaws, rules, and regulations of the association,
18		either in accordance with the bylaws or, if the bylaws
19		are silent, pursuant to a resolution adopted by the
20		board and approved by fifty per cent of all unit
21		owners at an annual meeting of the association or by
22		written consent of fifty per cent of all unit owners,



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1		that establishes a fining procedure that states the
2		basis for the fine and allows an appeal to the board
3		of the fine with notice and an opportunity to be heard
4		[and providing that if the fine is paid,] within a
5		reasonable time, but no later than ninety days after
6		the issuance of the fine. Prior to paying the fine,
7		the unit owner shall have the right to initiate a
8		dispute resolution process as provided by sections
9		514B-161[τ] and 514B-162[, or by filing a request for
10		an administrative-hearing under a pilot program
11		administered by the department of commerce and
12		<pre>eonsumer affairs];</pre>
13	(12)	Impose reasonable charges for the preparation and
14		recordation of amendments to the declaration,
15		documents requested for resale of units, or statements
16		of unpaid assessments;
17	(13)	Provide for cumulative voting through a provision in
18		the bylaws;
19	(14)	Provide for the indemnification of its officers,
20		board, committee members, and agents, and maintain
21		directors' and officers' liability insurance;



1 Assign its right to future income, including the right (15)2 to receive common expense assessments, but only to the 3 extent section 514B-105(e) expressly so provides; Exercise any other powers conferred by the declaration 4 (16)5 or bylaws; Exercise all other powers that may be exercised in 6 (17)7 this State by legal entities of the same type as the 8 association, except to the extent inconsistent with 9 this chapter; 10 Exercise any other powers necessary and proper for the (18)11 governance and operation of the association; and 12 (19)By regulation, subject to sections 514B-146, 514B-161, 13 and 514B-162, require that disputes between the board 14 and unit owners or between two or more unit owners 15 regarding the condominium be submitted to nonbinding ·. 16 alternative dispute resolution in the manner described 17 in the regulation as a prerequisite to commencement of a judicial proceeding." 18 SECTION 2. Section 514B-106, Hawaii Revised Statutes, is 19 20 amended by amending subsection (a) to read as follows: 21 "(a) Except as provided in the declaration, the bylaws, 22 subsection (b), or other provisions of this chapter, the board HB LRB 14-0564.doc



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[may] shall act in all instances on behalf of the association.
In the performance of their duties, officers and members of the
board shall owe the association <u>and its members</u> a fiduciary duty
and exercise the degree of care and loyalty required of an
officer or director of a corporation organized under chapter
414D."

7 SECTION 3. Section 514B-125, Hawaii Revised Statutes, is 8 amended by amending subsection (a) to read as follows:

9 "(a) All meetings of the board, other than executive
10 sessions, shall be open to all members of the association, and
11 association members who are not on the board may participate in
12 any deliberation or discussion, other than executive sessions[7
13 unless a majority of a guorum of the board votes otherwise]."

SECTION 4. This Act does not affect rights and duties that matured, penalties that were incurred, and proceedings that were begun before its effective date.

17 SECTION 5. Statutory material to be repealed is bracketed18 and stricken. New statutory material is underscored.

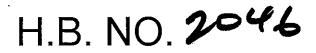
19 SECTION 6. This Act shall take effect upon its approval.

INTRODUCED BY:

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JAN 1 7 2014





Report Title: Condominiums; Board of Directors; Powers and Duties

Description:

Clarifies fiduciary duties of condominium association boards. Requires association approval of charges and penalties.

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

