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# 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 the board of  
2 directors of each association of apartment owners has broad  
3 powers that impact its members, such as adopting and amending  
4 budgets for revenues, expenditures, and reserves; hiring and  
5 discharging management agents and other independent contractors,  
6 agents, and employees; instituting, defending, or intervening in  
7 litigation or administrative proceedings affecting the  
8 condominium; regulating the use, maintenance, repair,  
9 replacement, and modification of common elements; imposing and  
10 receiving payments, fees, or charges for the use, rental, or  
11 operation of the common elements; imposing charges and  
12 penalties, including late fees and interest, for late payment of  
13 assessments; and levying fines for violations of the  
14 association's declaration, bylaws, and rules and regulations.

15           The legislature further finds that the boards of directors  
16 of associations of apartment owners represent the homeowners in  
17 managing a condominium, but the homeowners are vested with the



1 ultimate decision-making power. Clarifying board member  
2 responsibilities regarding board meetings and the nature and  
3 process of an owner's participation in deliberations or  
4 discussions of a board will help foster accountability and  
5 transparency for owners and board members in a condominium  
6 association.

7 The purpose of this Act is to:

- 8 (1) Clarify that any violation of a mandatory provision of  
9 the State's condominium law by a condominium board of  
10 directors or its officers and members is a per se  
11 violation of the board's fiduciary duty, but providing  
12 a safe harbor provision for a board member who votes  
13 for compliance during a board meeting;
- 14 (2) Balance the right of association members to speak and  
15 participate in deliberations and discussions of a  
16 board, while ensuring that a board is able to complete  
17 its agenda in a timely manner;
- 18 (3) Require the notice for board meetings to include a  
19 list of items expected to be on the meeting agenda;  
20 and



1 (4) Require unapproved final drafts of the minutes of a  
2 board meeting to be available within fourteen days  
3 after the meeting.

4 SECTION 2. Section 514B-106, Hawaii Revised Statutes, is  
5 amended by amending subsection (a) to read as follows:

6 "(a) Except as provided in the declaration, the bylaws,  
7 subsection (b), or other provisions of this chapter, the board  
8 may act in all instances on behalf of the association. In the  
9 performance of their duties, officers and members of the board  
10 shall owe the association a fiduciary duty and exercise the  
11 degree of care and loyalty required of an officer or director of  
12 a corporation organized under chapter 414D. Any violation of  
13 any mandatory provision of this chapter by a board or its  
14 officers and members shall be deemed a per se violation of the  
15 fiduciary duty owed pursuant to this subsection; provided that a  
16 board member may avoid liability under this subsection by voting  
17 against, or otherwise creating a written record of disagreement  
18 with, a board action that is in violation of a mandatory  
19 provision of this chapter and having that board member's vote  
20 recorded in the minutes of a regular or special meeting of the



1 board within forty-five days of the occurrence of the  
2 violation."

3 SECTION 3. Section 514B-125, Hawaii Revised Statutes, is  
4 amended to read as follows:

5 "[~~§~~514B-125] **Board meetings.** (a) All meetings of the  
6 board, other than executive sessions, shall be open to all  
7 members of the association, and association members who are not  
8 on the board ~~[may]~~ shall be permitted to participate in any  
9 deliberation or discussion, other than executive sessions,  
10 [unless a majority of a quorum of the board votes otherwise.]  
11 pursuant to owner participation rules adopted by the board.

12 (b) Following any election of board members by the  
13 association, the board may, at the board's next regular meeting  
14 or at a duly noticed special meeting, establish rules for owner  
15 participation in any deliberation or discussion at board  
16 meetings, other than executive sessions. A board that  
17 establishes such rules pursuant to this subsection:

- 18 (1) Shall notify all owners of these rules; and  
19 (2) May amend these rules at any regular or duly noticed  
20 special meeting of the association; provided that all  
21 owners shall be notified of any adopted amendments.



1           ~~[(b)]~~ (c) The board, ~~[with the approval of a majority of a~~  
2 ~~quorum of its members,]~~ by majority vote, may adjourn a meeting  
3 and reconvene in executive session to discuss and vote upon  
4 matters:

- 5           (1) Concerning personnel;
- 6           (2) Concerning litigation in which the association is or  
7           may become involved;
- 8           (3) Necessary to protect the attorney-client privilege of  
9           the association; or
- 10          (4) Necessary to protect the interests of the association  
11          while negotiating contracts, leases, and other  
12          commercial transactions.

13 The general nature of any business to be considered in executive  
14 session shall first be announced in open session.

15           ~~[(e)]~~ (d) All board meetings shall be conducted in  
16 accordance with the most recent edition of Robert's Rules of  
17 Order Newly Revised. Unless otherwise provided in the  
18 declaration or bylaws, a board may permit any meeting to be  
19 conducted by any means of communication through which all  
20 directors participating may simultaneously hear each other  
21 during the meeting. A director participating in a meeting by



1 this means is deemed to be present in person at the meeting. If  
2 permitted by the board, any unit owner may participate in a  
3 meeting conducted by a means of communication through which all  
4 participants may simultaneously hear each other during the  
5 meeting, provided that the board may require that the unit owner  
6 pay for the costs associated with the participation.

7 ~~(d)~~ (e) The board shall meet at least once a year.  
8 Notice of all board meetings shall be posted by the managing  
9 agent, resident manager, or a member of the board, in prominent  
10 locations within the project seventy-two hours prior to the  
11 meeting or simultaneously with notice to the board. The notice  
12 shall include a list of business items expected to be on the  
13 meeting agenda.

14 ~~(e)~~ (f) A director shall not vote by proxy at board  
15 meetings.

16 ~~(f)~~ (g) A director shall not vote at any board meeting  
17 on any issue in which the director has a conflict of interest.  
18 A director who has a conflict of interest on any issue before  
19 the board shall disclose the nature of the conflict of interest  
20 prior to a vote on that issue at the board meeting, and the



1 minutes of the meeting shall record the fact that a disclosure  
2 was made.

3 "Conflict of interest", as used in this subsection, means  
4 an issue in which a director has a direct personal or pecuniary  
5 interest not common to other members of the association."

6 SECTION 4. Section 514B-126, Hawaii Revised Statutes, is  
7 amended by amending subsection (c) to read as follows:

8 "(c) Minutes of all meetings of the board shall be  
9 available within seven calendar days after approval, and  
10 unapproved final drafts of the minutes of a meeting shall be  
11 available within [~~sixty~~] fourteen days after the meeting;  
12 provided that the minutes of any executive session may be  
13 withheld if their publication would defeat the lawful purpose of  
14 the executive session."

15 SECTION 5. Statutory material to be repealed is bracketed  
16 and stricken. New statutory material is underscored.

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

18



**Report Title:**

Condominiums; Condominium Association Members; Board Members;  
Board Meetings; Notice

**Description:**

Clarifies that any violation of a mandatory provision of the State's condominium law by a condominium board of directors or its officers and members is a per se violation of the board's fiduciary duty, but providing a safe harbor provision for a board member who votes for compliance during a board meeting. Balances the right of association members to speak and participate in deliberations and discussions of a board, while ensuring that a board is able to complete its agenda in a timely manner. Requires the notice for board meetings to include a list of items expected to be on the meeting agenda. Requires unapproved final drafts of the minutes of a board meeting to be available within fourteen days after the meeting. (SD1)

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

