
A BILL FOR AN ACT

RELATING TO CONDOMINIUM ASSOCIATION'S OPERATING BUDGET.

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

1 SECTION 1. The legislature finds that, due to issues in
2 the global insurance industry and recent increases in
3 catastrophic weather events around the world, there have been
4 unprecedented insurance premium rate increases for condominium
5 associations. These significant increases have left condominium
6 associations without a means to fund the premiums without
7 placing an unbearable and unforeseen financial burden on
8 Hawaii's condominium unit owners.

9 The purpose of this Act is to authorize an association's
10 board to borrow or reallocate funds from its replacement reserve
11 funds to pay for association operating expenses.

12 SECTION 2. Section 514B-105, Hawaii Revised Statutes, is
13 amended to read as follows:

14 "**§514B-105 Association; limitations on powers.** (a) The
15 declaration and bylaws shall not impose limitations on the power
16 of the association to deal with the developer that are more



1 restrictive than the limitations imposed on the power of the
2 association to deal with other persons.

3 (b) Unless otherwise permitted by the declaration, bylaws,
4 or this chapter, an association may adopt rules and regulations
5 that affect the use of or behavior in units that may be used for
6 residential purposes only to:

7 (1) Prevent any use of a unit that violates the
8 declaration or bylaws;

9 (2) Regulate any behavior in or occupancy of a unit that
10 violates the declaration or bylaws or unreasonably
11 interferes with the use and enjoyment of other units
12 or the common elements by other unit owners; or

13 (3) Restrict the leasing of residential units to the
14 extent those rules are reasonably designed to meet
15 underwriting requirements of institutional lenders who
16 regularly lend money secured by first mortgages on
17 units in condominiums or regularly purchase those
18 mortgages.

19 Otherwise, the association shall not regulate any use of or
20 behavior in units by means of the rules and regulations.



1 (c) Any payments made by or on behalf of a unit owner
2 shall first be applied to outstanding common expenses that are
3 assessed to all unit owners in proportion to the common interest
4 appurtenant to their respective units, including commercial
5 property assessed financing assessment expenses incurred for
6 improvements financed pursuant to section 196-64.5. Only after
7 the outstanding common expenses have been paid in full may the
8 payments be applied to other charges owed to the association,
9 including assessed charges to the unit such as ground lease
10 rent, utility sub-metering, storage lockers, parking stalls,
11 boat slips, insurance deductibles, and cable. After these
12 charges are paid, other charges, including unpaid late fees,
13 legal fees, fines, and interest, may be assessed in accordance
14 with an application of payment policy adopted by the board;
15 provided that if a unit owner has designated that any payment is
16 for a specific charge that is not a common expense as described
17 in this subsection, the payment may be applied in accordance
18 with the unit owner's designation even if common expenses remain
19 outstanding.

20 (d) No unit owner who requests legal or other information
21 from the association, the board, the managing agent, or their



1 employees or agents, shall be charged for the reasonable cost of
2 providing the information unless the association notifies the
3 unit owner that it intends to charge the unit owner for the
4 reasonable cost. The association shall notify the unit owner in
5 writing at least ten days prior to incurring the reasonable cost
6 of providing the information, except that no prior notice shall
7 be required to assess the reasonable cost of providing
8 information on delinquent assessments or in connection with
9 proceedings to enforce the law or the association's governing
10 documents.

11 After being notified of the reasonable cost of providing
12 the information, the unit owner may withdraw the request, in
13 writing. A unit owner who withdraws a request for information
14 shall not be charged for the reasonable cost of providing the
15 information.

16 (e) Subject to any approval requirements and spending
17 limits contained in the declaration or bylaws, the association
18 may authorize the board to borrow money for the repair,
19 replacement, maintenance, operation, or administration of the
20 common elements and personal property of the project, or the
21 making of any additions, alterations, and improvements thereto;



1 provided that written notice of the purpose and use of the funds
2 is first sent to all unit owners and owners representing fifty
3 per cent of the common interest vote or give written consent to
4 the borrowing. In connection with the borrowing, including non-
5 commercial property assessed financing, the board may grant to
6 the lender the right to assess and collect monthly or special
7 assessments from the unit owners and to enforce the payment of
8 the assessments or other sums by statutory lien and foreclosure
9 proceedings. The cost of the borrowing, including, without
10 limitation, all principal, interest, commitment fees, and other
11 expenses payable with respect to the borrowing or the
12 enforcement of the obligations under the borrowing, shall be a
13 common expense of the project. For purposes of this section,
14 the financing of insurance premiums by the association within
15 the policy period shall not be deemed a loan and no lease shall
16 be deemed a loan if it provides that at the end of the lease the
17 association may purchase the leased equipment for its fair
18 market value.

19 (f) For financing assessments imposed upon the project
20 under a commercial property assessed financing program pursuant
21 to section 196-64.5 and due from the association, the cost of



1 the commercial property assessed financing, including all
2 principal, interest, commitment fees, servicing fees, and other
3 expenses payable with respect to this borrowing or the
4 enforcement of the obligations under the borrowing, shall be a
5 common expense of the project and the unit owners' proportionate
6 share of the financing assessment shall be collected in the same
7 manner as common expenses. The written consent of at least
8 fifty per cent of all unit owners to finance qualifying
9 improvements with commercial property assessed financing shall
10 include an acknowledgement that the annual financing assessment
11 required to fund debt service on the commercial property
12 assessed financing shall be included as part of the
13 association's adopted revised budget.

14 (g) Subject to any spending limits contained in the
15 declaration or bylaws, the association may authorize the board
16 to borrow or reallocate funds from the replacement reserves fund
17 to pay for association-wide operating expenses to the extent
18 that the reserve fund maintains a minimum of fifty per cent of
19 the required estimated replacement reserves as detailed in the
20 reserve study conducted pursuant to section 514B-148(a)(5) and
21 (b); provided that:



1 (1) Written notice of the purpose and proposed use of the
2 funds is sent to all unit owners, and unit owners
3 representing a minimum of fifty per cent of the common
4 interest consent to the borrowing;

5 (2) No consent by the ownership shall be given unless the
6 written notice by the association to borrow or
7 reallocate funds from the replacement reserves fund
8 includes a schedule for when and the manner in which
9 the funds will be restored over a maximum of one year
10 and includes statements regarding the necessity of
11 using the replacement reserves for other than their
12 designated purpose, the necessity of the expense
13 involved, and why the expense was not or could not
14 have been reasonably foreseen in the budgeting
15 process. A proposal to borrow or reallocate
16 replacement reserves funds that are in excess of one
17 hundred per cent of the estimated replacement reserves
18 shall not require a schedule for restoration of
19 borrowed or reallocated funds;

20 (3) An association shall not borrow or reallocate
21 replacement reserves funds that are reserved for



1 repair and maintenance projects occurring within one
2 year of the borrowing date;

3 (4) An association shall not borrow or reallocate
4 replacement reserves funds for operating expenses that
5 primarily benefit the board, its officers, or their
6 families. Violating this section constitutes a
7 violation of the member's fiscal duty; and

8 (5) Every authorized borrowing or reallocation of
9 replacement reserves funds shall be restored before
10 any additional authorization for borrowing or
11 reallocation of replacement reserves funds if the
12 replacement reserves are less than one hundred per
13 cent of the estimated replacement reserves."

14 SECTION 3. New statutory material is underscored.

15 SECTION 4. This Act shall take effect on July 1, 3000.



Report Title:

Condominium Associations; Boards of Directors; Reserve Funds;
Operating Expenses

Description:

Permits condominium associations to borrow from or reallocate
their reserve funds; provided that the loan is repaid within one
year. Effective 7/1/3000. (HD1)

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not legislation or evidence of legislative intent.*

