
A BILL FOR AN ACT

RELATING TO CONDOMINIUMS.

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

1 SECTION 1. The purpose of this Act is to require that
2 certain managing agents report to condominium unit owners and
3 the real estate commission when a condominium association that
4 the agent manages fails to comply with budget and replacement
5 reserves requirements.

6 SECTION 2. Section 514B-148, Hawaii Revised Statutes, is
7 amended to read as follows:

8 "**§514B-148 Association fiscal matters; budgets and**
9 **replacement reserves.** (a) The budget required under section
10 514B-144(a) shall include a summary with at least the following
11 details:

- 12 (1) The estimated revenues and operating expenses of the
13 association;
- 14 (2) Disclosure as to whether the budget has been prepared
15 on a cash or accrual basis;
- 16 (3) The estimated costs of fire safety equipment or
17 installations that meet the requirements of a life



1 safety evaluation required by the applicable county
2 for any building located in a county with a population
3 greater than five hundred thousand; provided that the
4 reserve study may forecast a loan or special
5 assessment to fund life safety components or
6 installation;

7 (4) The balance of the total replacement reserves fund of
8 the association as of the date of the budget;

9 (5) The estimated replacement reserves assessments that
10 the association will require to maintain the property
11 based on a reserve study performed by or on behalf of
12 the association; provided that the reserve study, if
13 not prepared by an independent reserve study preparer,
14 shall be reviewed by an independent reserve study
15 preparer not less than every three years; provided
16 further that a managing agent with industry reserve
17 study designations shall not be considered as having a
18 conflict of interest for purposes of this paragraph;

19 (6) A general explanation of how the estimated replacement
20 reserves assessments are computed and detailing;



- 1 (A) The identity, qualifications, and potential
- 2 conflicts of interest of the person or entity
- 3 performing the reserve study, update, or any
- 4 review thereof;
- 5 (B) Disclosure of any component of association
- 6 property omitted from the reserve study and the
- 7 basis for the omission;
- 8 (C) Planned increases in the estimated replacement
- 9 reserve assessments over the thirty-year plan;
- 10 and
- 11 (D) Whether the actual estimated replacement reserves
- 12 assessments for the prior year as defined in the
- 13 study was less than the assessments provided for
- 14 in the reserve study, and, if so, by how much,
- 15 and explaining the impact of the lesser
- 16 assessments on future estimated replacement
- 17 reserves assessments;
- 18 (7) The amount the association must collect for the fiscal
- 19 year to fund the estimated replacement reserves
- 20 assessments; and



1 (8) Information as to whether the amount the association
2 must collect for the fiscal year to fund the estimated
3 replacement reserves assessments was calculated using
4 a per cent funded or cash flow plan. The method or
5 plan shall not circumvent the estimated replacement
6 reserves assessments amount determined by the reserve
7 study pursuant to paragraph (5).

8 (b) The association shall assess the unit owners to either
9 fund a minimum of fifty per cent of the estimated replacement
10 reserves assessments or fund one hundred per cent of the
11 estimated replacement reserves assessments when using a cash
12 flow plan; provided that a new association need not collect
13 estimated replacement reserves assessments until the fiscal year
14 that begins after the association's first annual meeting. For
15 each fiscal year, the association shall collect the amount
16 assessed to fund the estimated replacement reserves assessments
17 for that fiscal year, as determined by the association's plan.

18 (c) The association shall compute the estimated
19 replacement reserves assessments by a formula that is based on
20 the estimated life and the estimated capital expenditure or



1 major maintenance required for each part of the property. The
2 estimated replacement reserves assessments shall include:

3 (1) Adjustments for revenues that will be received and
4 expenditures that will be made before the beginning of
5 the fiscal year to which the budget relates; and

6 (2) Separate, designated reserves for each part of the
7 property for which capital expenditures or major
8 maintenance will exceed \$10,000. Parts of the
9 property for which capital expenditures or major
10 maintenance will not exceed \$10,000 may be aggregated
11 in a single designated reserve.

12 (d) No association or unit owner, director, officer,
13 managing agent, or employee of an association who makes a good
14 faith effort to calculate the estimated replacement reserves
15 assessments for an association shall be liable if the estimate
16 subsequently proves incorrect.

17 (e) Except in emergency situations or with the approval of
18 a majority of the unit owners, a board may not exceed its total
19 adopted annual operating budget by more than twenty per cent
20 during the fiscal year to which the budget relates. Before
21 imposing or collecting an assessment under this subsection that



1 has not been approved by a majority of the unit owners, the
2 board shall adopt a resolution containing written findings as to
3 the necessity of the extraordinary expense involved and why the
4 expense was not or could not have been reasonably foreseen in
5 the budgeting process, and the resolution shall be distributed
6 to the members with the notice of assessment.

7 (f) The requirements of this section shall override any
8 requirements in an association's declaration, bylaws, or any
9 other association documents relating to preparation of budgets,
10 calculation of replacement reserve requirements, assessment and
11 funding of replacement reserves, and expenditures from
12 replacement reserves with the exception of:

13 (1) Any requirements in an association's declaration,
14 bylaws, or any other association documents that
15 require the association to collect more than fifty per
16 cent of replacement reserve requirements; or

17 (2) Any provisions relating to upgrading the common
18 elements, [~~such as~~] including additions, improvements,
19 and alterations to the common elements.

20 (g) Subject to the procedures of section 514B-157 and any
21 rules adopted by the commission, any unit owner whose



1 association board fails to comply with this section may enforce
2 compliance by the board. In any proceeding to enforce
3 compliance, a board that has not prepared an annual operating
4 budget and reserve study shall have the burden of proving it has
5 complied with this section.

6 (h) Subject to any rules adopted by the commission, any
7 managing agent whose client is an association subject to this
8 chapter shall notify in writing:

9 (1) Each unit owner of the association; and

10 (2) The real estate commission,
11 if the association being managed by the managing agent fails to
12 comply with this section; provided that this subsection shall
13 only apply to a managing agent whose contract involves budgetary
14 and replacement reserve responsibilities and provides authority
15 for the managing agent to correspond with the unit owners.

16 [~~(h) As used in~~] (i) For the purposes of this section:

17 "Capital expenditure" means an expense that results from
18 the purchase or replacement of an asset whose life is greater
19 than one year, or the addition of an asset that extends the life
20 of an existing asset for a period greater than one year.



1 "Cash flow plan" means a minimum thirty-year projection of
2 an association's future income and expense requirements to fund
3 fully its replacement reserves requirements each year during
4 that thirty-year period, except in an emergency; provided that
5 it does not include a projection of special assessments or loans
6 during that thirty-year period, except in an emergency.

7 "Emergency situation" means any extraordinary expenses:

8 (1) Required by an order of a court;

9 (2) Necessary to repair or maintain any part of the
10 property for which the association is responsible
11 where a threat to personal safety on the property is
12 discovered;

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

17 (4) Necessary to respond to any legal or administrative
18 proceeding brought against the association that could
19 not have been reasonably foreseen by the board in
20 preparing and distributing the annual operating
21 budget; or



1 (5) Necessary for the association to obtain adequate
2 insurance for the property that the association must
3 insure.

4 "Independent reserve study preparer" means any
5 organization, company, or individual with a reserve study
6 certification from an industry organization.

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

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

14 SECTION 3. Statutory material to be repealed is bracketed
15 and stricken. New statutory material is underscored.

16 SECTION 4. This Act shall take effect on July 1, 2050.

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Report Title:

Real Estate Commission; Condominium Associations; Condominiums;
Managing Agents; Unit Owners; Reporting

Description:

Requires certain managing agents to notify each unit owner and the Real Estate Commission when a condominium association that the agent manages fails to meet budget and replacement reserves reporting requirements. Effective 7/1/2050. (SD1)

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