

JAN 21 2026

A BILL FOR AN ACT

RELATING TO COMMON INTEREST COMMUNITIES.

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

1 SECTION 1. The legislature finds that condominium
2 associations, led by boards of directors and overseen by
3 managing agents, primarily operate under the principles of self-
4 governance and self-enforcement. The legislature further finds,
5 however, that the powers of associations, boards, and managing
6 agents are not unlimited. It is critical to the well-being of
7 residents and long-term sustainability of an association that
8 its board members and managing agents understand their
9 obligations to comply with local, state, and federal laws.

10 Accordingly, the purpose of this Act is to specify that
11 condominium associations, boards, and managing agents must
12 comply with county, state, and federal laws and regulations,
13 including those relating to mortgage lending.

14 SECTION 2. Section 514B-104, Hawaii Revised Statutes, is
15 amended by amending subsection (a) to read as follows:

16 "(a) Except as provided in section 514B-105, and subject
17 to the provisions of the declaration [and]; bylaws^[r]; and all



1 county ordinances and state and federal laws, rules, and
2 regulations, including mortgage lending requirements, the
3 association, even if unincorporated, may:

- 4 (1) Adopt and amend the declaration, bylaws, and rules and
5 regulations;
- 6 (2) Adopt and amend budgets for revenues, expenditures,
7 and reserves and collect assessments for common
8 expenses from unit owners, subject to section
9 514B-148;
- 10 (3) Hire and discharge managing agents and other
11 independent contractors, agents, and employees;
- 12 (4) Institute, defend, or intervene in litigation or
13 administrative proceedings in its own name on behalf
14 of itself or two or more unit owners on matters
15 affecting the condominium. For the purposes of
16 actions under chapter 480, associations shall be
17 deemed to be "consumers";
- 18 (5) Make contracts and incur liabilities;
- 19 (6) Regulate the use, maintenance, repair, replacement,
20 and modification of common elements;



- 1 (7) Cause additional improvements to be made as a part of
 - 2 the common elements;
 - 3 (8) Acquire, hold, encumber, and convey in its own name
 - 4 any right, title, or interest to real or personal
 - 5 property; provided that:
 - 6 (A) Designation of additional areas to be common
 - 7 elements or subject to common expenses after the
 - 8 initial filing of the declaration or bylaws shall
 - 9 require the approval of at least sixty-seven per
 - 10 cent of the unit owners;
 - 11 (B) If the developer discloses to the initial buyer
 - 12 in writing that additional areas will be
 - 13 designated as common elements whether pursuant to
 - 14 an incremental or phased project or otherwise,
 - 15 the requirements of this paragraph shall not
 - 16 apply as to those additional areas; and
 - 17 (C) The requirements of this paragraph shall not
 - 18 apply to the purchase of a unit for a resident
 - 19 manager, which may be purchased with the approval
 - 20 of the board;



- 1 (9) Subject to section 514B-38, grant easements, leases,
2 licenses, and concessions through or over the common
3 elements and permit encroachments on the common
4 elements;
 - 5 (10) Impose and receive any payments, fees, or charges for
6 the use, rental, or operation of the common elements,
7 other than limited common elements described in
8 section 514B-35(2) and (4), and for services provided
9 to unit owners;
 - 10 (11) Impose charges and penalties, including late fees and
11 interest, for late payment of assessments and levy
12 reasonable fines for violations of the declaration,
13 bylaws, rules, and regulations of the association,
14 either in accordance with the bylaws or, if the bylaws
15 are silent, pursuant to a resolution adopted by the
16 board that establishes a fining procedure that states
17 the basis for the fine and allows an appeal to the
18 board of the fine with notice and an opportunity to be
19 heard and providing that if the fine is paid, the unit
20 owner shall have the right to initiate a dispute
21 resolution process as provided by sections 514B-161,



- 1 514B-162, or by filing a request for an administrative
2 hearing under a pilot program administered by the
3 department of commerce and consumer affairs;
- 4 (12) Impose reasonable charges for the preparation and
5 recording of amendments to the declaration,
6 documents requested for resale of units, or statements
7 of unpaid assessments;
- 8 (13) Provide for cumulative voting through a provision in
9 the bylaws;
- 10 (14) Provide for the indemnification of its officers,
11 board, committee members, and agents, and maintain
12 directors' and officers' liability insurance;
- 13 (15) Assign its right to future income, including the right
14 to receive common expense assessments, but only to the
15 extent section 514B-105(e) expressly so provides;
- 16 (16) Exercise any other powers conferred by the declaration
17 or bylaws;
- 18 (17) Exercise all other powers that may be exercised in
19 this State by legal entities of the same type as the
20 association, except to the extent inconsistent with
21 this chapter;



10 SECTION 3. Section 514B-106, Hawaii Revised Statutes, is
11 amended by amending subsection (a) to read as follows:

12 "(a) Except as provided in the declaration[7]; the
13 bylaws[7]; subsection (b) [7, or]; other provisions of this
14 chapter[7]; or county ordinances or state and federal laws,

15 rules, and regulations, including mortgage lending requirements,
16 the board may act in all instances on behalf of the association.

17 In the performance of their duties, officers and members of the

18 board shall owe the association a fiduciary duty and exercise

19 the degree of care and loyalty required of an officer or

20 director of a corporation organized under chapter 414D. Any

21 violation by a board or its officers or members of the mandatory



1 provisions of section 514B-161 or 514B-162 may constitute a
2 violation of the fiduciary duty owed pursuant to this
3 subsection; provided that a board member may avoid liability
4 under this subsection by indicating in writing the board
5 member's disagreement with [such] the board action or rescinding
6 or withdrawing the violating conduct within forty-five days of
7 the occurrence of the initial violation."

8 SECTION 4. Section 514B-132, Hawaii Revised Statutes, is
9 amended by amending subsection (a) to read as follows:

10 "(a) Every managing agent shall:

11 (1) Be a:

12 (A) Licensed real estate broker in compliance with
13 chapter 467 and the rules of the commission.
14 With respect to any requirement for a corporate
15 managing agent in any declaration or bylaws
16 recorded before July 1, 2006, any managing agent
17 organized as a limited liability company shall be
18 deemed to be organized as a corporation for the
19 purposes of this paragraph, unless the
20 declaration or bylaws are expressly amended after
21 July 1, 2006, to require that the managing agent



1 be organized as a corporation and not as a
2 limited liability company; or
3 (B) Corporation authorized to do business under
4 article 8 of chapter 412;
5 (2) Register with the commission prior to conducting
6 managing agent activity through approval of a
7 completed registration application, payment of fees,
8 and submission of any other additional information set
9 forth by the commission. The registration shall be
10 for a biennial period with termination on December 31
11 of an even-numbered year. The commission shall
12 prescribe a deadline date prior to the termination
13 date for the submission of a completed reregistration
14 application, payment of fees, and any other additional
15 information set forth by the commission. Any managing
16 agent who has not met the submission requirements by
17 the deadline date shall be considered a new applicant
18 for registration and subject to initial registration
19 requirements. The information required to be
20 submitted with any application shall include the name,



1 business address, phone number, and names of
2 associations managed;
3 (3) Obtain and keep current a fidelity bond in an amount
4 equal to \$500 multiplied by the aggregate number of
5 units of the association managed by the managing
6 agent; provided that the amount of the fidelity bond
7 shall not be less than \$20,000 nor greater than
8 \$500,000. Upon request by the commission, the
9 managing agent shall provide evidence of a current
10 fidelity bond or a certification statement from an
11 insurance company authorized by the insurance division
12 of the department of commerce and consumer affairs
13 certifying that the fidelity bond is in effect and
14 meets the requirements of this section and the rules
15 adopted by the commission. The managing agent shall
16 permit only employees covered by the fidelity bond to
17 handle or have custody or control of any association
18 funds, except any principals of the managing agent
19 that cannot be covered by the fidelity bond. The
20 fidelity bond shall protect the managing agent against
21 the loss of any association's moneys, securities, or



1 other properties caused by the fraudulent or dishonest
2 acts of employees of the managing agent. Failure to
3 obtain or maintain a fidelity bond in compliance with
4 this chapter and the rules adopted pursuant thereto,
5 including failure to provide evidence of the fidelity
6 bond coverage in a timely manner to the commission,
7 shall result in nonregistration or the automatic
8 termination of the registration, unless an approved
9 exemption or a bond alternative is presently
10 maintained. A managing agent who is unable to obtain
11 a fidelity bond may seek an exemption from the
12 fidelity bond requirement from the commission;

13 (4) Act promptly and diligently to recover from the
14 fidelity bond, if the fraud or dishonesty of the
15 managing agent's employees causes a loss to an
16 association, and apply the fidelity bond proceeds, if
17 any, to reduce the association's loss. If more than
18 one association suffers a loss, the managing agent
19 shall divide the proceeds among the associations in
20 proportion to each association's loss. An association
21 may request a court order requiring the managing agent



1 to act promptly and diligently to recover from the
2 fidelity bond. If an association cannot recover its
3 loss from the fidelity bond proceeds of the managing
4 agent, the association may recover by court order from
5 the real estate recovery fund established under
6 section 467-16, provided that:

- 7 (A) The loss is caused by the fraud,
8 misrepresentation, or deceit of the managing
9 agent or its employees;
- 10 (B) The managing agent is a licensed real estate
11 broker; and
- 12 (C) The association fulfills the requirements of
13 sections 467-16 and 467-18 and any applicable
14 rules of the commission;
- 15 (5) Pay a nonrefundable application fee and, upon
16 approval, an initial registration fee, and
17 subsequently pay a reregistration fee, as prescribed
18 by rules adopted by the director of commerce and
19 consumer affairs pursuant to chapter 91. A compliance
20 resolution fee shall also be paid pursuant to section
21 26-9(o) and the rules adopted thereto; ~~and~~



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

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

19

INTRODUCED BY: Carol Fahrensang



S.B. NO. 2294

Report Title:

Condominiums; Associations; Boards; Managing Agents; Self-Governance; Compliance

Description:

Specifies that all condominium associations, boards, and managing agents are required to comply with the declaration, bylaws, and all county ordinances and state and federal laws, rules, and regulations, including mortgage lending requirements.

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

