

## ACT 239

H.B. NO. 2894-76

A Bill for an Act Relating to Horizontal Property Regimes.

*Be It Enacted by the Legislature of the State of the Hawaii:*

SECTION 1. Chapter 514, Hawaii Revised Statutes, is amended by adding three new sections to be appropriately designated and to read as follows:

**“Sec. 514- Parking stalls.** Notwithstanding any provision of the declaration, apartment owners with the consent of the lessor and mortgagee, if any, shall have the right to change the designation of parking stalls which are appurtenant to their respective apartments by amendment of the declaration and respective apartment leases or deeds involved. Such amendment shall be effective only upon recording or filing of the same of record with the bureau of conveyances.

**Sec. 514- Attorney’s fees and expenses of enforcement.** All costs and expenses, including reasonable attorney’s fees, incurred by or on behalf of the association for:

- (1) Collecting any delinquent assessments against any owner’s apartment;
- (2) Foreclosing any lien thereon;
- (3) Enforcing any provision of the declaration, bylaws, house rules, and the Horizontal Property Act; or
- (4) The rules and regulations of the real estate commission; against an owner or any occupant of an apartment shall be promptly paid on demand to the association by the apartment owner; provided that if the

claims upon which the association takes any action are not substantiated, all costs and expenses, including reasonable attorney's fees, incurred by the apartment owner as a result of the action of the association, shall be promptly paid on demand to the apartment owner by the association.

**Sec. 514- Disclosure requirements.** (a) Each developer of a project subject to this chapter shall prepare and provide to each prospective initial purchaser an abstract which shall contain the following:

- (1) The name and address of the project, and the name, address, and telephone number of the developer or his agent and of the project manager or his agent;
  - (2) A breakdown of the annual maintenance fees and the monthly estimated cost for each apartment, revised and updated at least every twelve months and certified to have been based on generally accepted accounting principles;
  - (3) A description of all warranties for the individual apartments and the common elements, including the date of initiation and expiration of any such warranties; and
  - (4) A statement of the proposed number of apartments to be used for residential or hotel use in a mixed use project containing apartments for both residential and hotel use;
  - (5) A statement of the extent of commercial or other non-residential development in the project.
- (b) This section shall be administered by the real estate commission."

SECTION 2. Section 514-10, Hawaii Revised Statutes, is amended to read as follows:

**"Sec. 514-10 Common profits and expenses.** The common profits of the property shall be distributed among, and the common expenses shall be charged to, the apartment owners, including the developer, in proportion to the common interest appurtenant to their respective apartments; provided that in a mixed use project containing apartments for both residential and commercial use, such charges and distributions may be apportioned in any fair and equitable manner as set forth in the declaration; provided further that in the case of limited common elements all costs and expenses of every description pertaining thereto including but not limited to the cost of the maintenance, repair, and replacement of, and the making of any additions and improvements to, any limited common element may be charged to the owners of the apartments for the use of which such limited common element is reserved in any equitable manner as set forth in the declaration. An apartment owner, including the developer, shall become obligated for the payment of the share of the common expenses allocated to his apartment at the time the certificate of occupancy relating to his apartment is issued by the appropriate county agency."

SECTION 3. Section 514-20, Hawaii Revised Statutes, is amended to read as follows:

**"Sec. 514-20 Contents of bylaws.** The bylaws shall provide for at least the

following:

- (1) The election of a board of directors, the number of persons constituting the same, and that the terms of at least one-third of the directors shall expire annually; the powers and duties of the board; the compensation, if any, of the directors; the method of removal from office of directors; and whether or not the board may engage the services of a manager or managing agent, or both, and specifying which of the powers and duties granted to the board by this chapter or otherwise may be delegated by the board to either or both of them.
- (2) Method of calling meetings of the apartment owners; what percentage, if other than a majority of apartment owners, constitutes a quorum; and what percentage is, consistent with this chapter, necessary to adopt decisions binding on all apartment owners.
- (3) Election of a president from among the board of directors who shall preside over the meetings of the board of directors and of the association of apartment owners.
- (4) Election of a secretary who shall keep the minute book wherein resolutions shall be recorded.
- (5) Election of a treasurer who shall keep the financial records and books of account.
- (6) Operation of the property, payment of the common expenses, and determination and collection of the common charges.
- (7) Manner of collecting from the apartment owners their share of the common expenses.
- (8) Designation and removal of personnel necessary for the maintenance, repair, and replacement of the common elements.
- (9) Method of adopting and of amending administrative rules and regulations governing the details of the operation and use of the common elements.
- (10) Such restrictions on and requirements respecting the use and maintenance of the apartments and the use of the common elements, not set forth in the declaration, as are designed to prevent unreasonable interference with the use of their respective apartments and of the common elements by the several apartment owners.
- (11) Seventy-five percent of the apartment owners may at any time modify or amend the bylaws, but each one of the particulars set forth in this section shall always be embodied in the bylaws.
- (12) The first meeting of the association of apartment owners shall be held not later than one hundred eighty days after a certificate of occupancy for the project has been issued by the appropriate county agency.
- (13) All members of the board of directors shall be owners, co-owners, vendees under an agreement of sale, or an officer of any corporate owner of an apartment. The partners in a general partnership and the general partners of a limited partnership shall be deemed to be the owners of an apartment for this purpose.
- (14) A director shall not vote at any board meeting on any issue in which he has a conflict of interest.

- (15) No resident manager of the condominium shall serve on the board of directors.
- (16) The board of directors shall meet at least once a year.
- (17) Notices of association meetings, whether annual or special shall be sent to each member of the association of apartment owners at least fourteen days prior to such meeting, and shall contain at least: the date and time of such meeting, the place of such meeting, the items on the agenda for such meeting and a standard proxy form authorized by the association, if any.
- (18) A proxy form which accompanies a notice of meeting shall be valid for the meeting to which the notice pertains and its adjournment only.
- (19) The resident manager or managing agent, or board of directors shall keep an accurate and current list of members of the association of apartment owners and their current addresses and the names and addresses of the vendees under an agreement of sale, if any. The list shall be maintained at a place designated by the board of directors.
- (20) All association and board of directors meetings shall be conducted in accordance with Roberts Rules of Order, or other accepted rules for the conduct of meetings.
- (21) The members of the association of apartment owners may require, by vote at the annual meeting, a yearly audit of the association books by a certified public accountant.
- (22) All meetings of the association of apartment owners shall be held at the address of the condominium project, or elsewhere within the State as determined by the board of directors.”

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.

SECTION 5. If any provision of this Act, or the application thereof to any person or circumstances is held invalid, the invalidity does not affect other provisions or applications of the Act which can be given effect without the invalid provision or application, and to this end the provisions of this Act are severable.

SECTION 6. Statutory material to be repealed is bracketed. New material is underscored. In printing this Act, the revisor of statutes need not include the brackets, the bracketed material, or the underscoring.\*

SECTION 7. This Act shall take effect upon its approval.

(Approved June 9, 1976.)

---

\*Edited accordingly.