

ACT 212

S.B. NO. 588

A Bill for an Act Relating to Horizontal Property Regimes.

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

SECTION 1. Section 514A, Hawaii Revised Statutes, is amended by adding a new section to be appropriately designated and to read as follows:

“§514A- Audits. The association of apartment owners shall require a yearly audit of the association financial accounts and no less than one yearly unannounced audit of the association’s financial accounts by a certified public accountant; provided that the yearly audit and the yearly unannounced audit may be waived by a majority vote of all apartment owners taken at an association meeting.”

SECTION 2. Section 514A-82, Hawaii Revised Statutes, is amended to read as follows:

“§514A-82 Contents of bylaws. The bylaws shall provide for at least the following:

- (1) Board of directors:

- (A) The election of a board of directors;
  - (B) The number of persons constituting the board; provided that condominiums with more than one hundred individual apartment units shall have an elected board of not less than nine members unless not less than seventy-five per cent of all apartment owners vote by secret written ballot to set the minimum number of directors at less than nine during an annual meeting or special meeting called for the purpose of reducing the minimum number of directors;
  - (C) That for the initial term of office, directors shall serve for a term of three years or the term as specified by the bylaws or until their successors have been elected or appointed;
  - (D) The powers and duties of the board;
  - (E) The compensation, if any, of the directors;
  - (F) The method of removal from office of directors; and
  - (G) 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; what percentage is, consistent with this chapter, necessary to adopt decisions binding on all apartment owners and that votes allocated to any area which constitutes a common element under section 514A-13(h) shall not be cast at any association meeting, whether or not it is so designated in the declaration.
  - (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 common expenses, expenses, costs, and fees recoverable by the association under section 514A-94, and any penalties and late charges.
  - (8) Designation and removal of personnel necessary for the maintenance, repair, and replacement of the common elements.
  - (9) Method of adopting and 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) The bylaws may be amended at any time by the vote or written consent of not less than sixty-five per cent of all apartment owners,

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 recordation of the first apartment conveyance; provided forty per cent or more of the project has been sold and recorded. If forty per cent of the project is not sold and recorded at the end of one year, an annual meeting shall be called; provided ten per cent of the apartment owners so request.
- (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. There shall not be more than one representative on the board of directors from any one apartment.
- (14) A director shall not cast any proxy vote at any board meeting, nor shall a director vote at any board meeting on any issue in which the director has a conflict of interest.
- (15) No resident manager of a condominium shall serve on its 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 the meeting, and shall contain at least: the date, time, and place of the meeting, the items on the agenda for the meeting, and a standard proxy form authorized by the association, if any.
- (18) No resident manager, or managing agent shall solicit, for use by such manager or managing agent, any proxies from any apartment owner of the association of owners which employs him, nor shall he cast any proxy vote at any association meeting except for the purpose of establishing a quorum. No member of a board of directors who uses association funds to solicit proxies, shall cast any proxy votes for the election or reelection of board members at any association meeting unless the proxy form specifically authorizes the board member to vote for the election or reelection of board directors.
- (19) All association and board of directors meetings shall be conducted in accordance with the most current edition of Robert's Rules of Order.
- [(20) 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.]
- [(21) (20) 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.
- [(22) (21) Notice of the annual board meeting shall be given in a reasonable manner at least fourteen days, if practicable, prior to the meeting.
- [(23) (22) Penalties chargeable against persons for violation of the covenants, conditions, or restrictions set forth in the declaration, or of the bylaws and administrative rules adopted pursuant thereto,

method of determination of violations, and manner of enforcing such penalties, if any.”

SECTION 3. Section 514A-84, Hawaii Revised Statutes, is amended by amending subsection (d) to read as follows:

“(d) The funds in the general operating account of the condominium association shall not be commingled with funds of other activities such as lease rent collections and rental operations, nor shall the managing agent commingle any association funds with its own funds. [Rental operation] For purposes of this subsection, lease rent collections and rental operations shall not include either the rental or leasing of common elements that is conducted on behalf of the board of directors of the association of apartment owners[.]; or the collection of ground lease rents from individual apartment owners of a project and the payment of such ground lease rents to the ground lessor; provided that the collection is allowed by the provisions of the declaration, bylaws, master deed, master lease, or individual apartment leases of the project; that the management contract requires the managing agent to collect ground lease rents from the individual apartment owners and pay the ground lease rents to the ground lessor; and that the system of lease rent collection is approved by a majority vote of all apartment owners at a meeting of the association of apartment owners; provided further that the managing agent shall not pay ground lease rent to the ground lessor in excess of actual ground lease rent collected from individual apartment owners.]”

SECTION 4. Section 514A-85, Hawaii Revised Statutes, is amended to read as follows:

“**§514A-85 Books of receipts and expenditures; unpaid assessments; availability for examination.** The manager or board of directors shall keep detailed, accurate records in chronological order, of the receipts and expenditures affecting the common elements, specifying and itemizing the maintenance and repair expenses of the common elements and any other expenses incurred. The manager or board of directors shall also keep monthly statements indicating the total current delinquent dollar amount of any unpaid assessments for common expenses. All records and the vouchers authorizing the payments, and statements shall be kept and maintained at the address of the project, or elsewhere within the State as determined by the board of directors, and shall be available for examination by the apartment owners at convenient hours of week days. The manager or board of directors shall not transfer by telephone association funds between accounts, including, but not limited to, the general operating account and reserve fund account.”

SECTION 5. Section 514A-95, Hawaii Revised Statutes, is amended by amending subsection (a) to read as follows:

“(a) Every managing agent shall be licensed as a real estate broker in compliance with chapter 467 and the rules of the real estate commission or a corporation authorized to do business under chapter 406 and shall register with the real estate commission. The information required to be submitted shall include, but not be limited to, the name, business address, and phone number of the managing agent. The managing agent shall also show proof of bonding obtained pursuant to section 514A-84. Any person aggrieved by an act, representation, transaction, or conduct of a managing agent upon the grounds of fraud, misrepresentation, or deceit shall recover by order of the circuit court or district court of the county where the violation occurred first from the bond

required by section 514A-84, and if the managing agent is a licensed real estate broker, secondly from the real estate recovery fund established under section 467-16."

SECTION 6. Section 514A-47, Hawaii Revised Statutes, is amended to read as follows:

**"§514A-47 Cease and desist orders.** In addition to its authority under section 514A-48, whenever the real estate commission has reason to believe that any person is violating or has violated sections 514A-2, 514A-31 to 514A-39, 514A-41, 514A-42, 514A-44 to 514A-49, 514A-62 to 514A-66, 514-68, 514A-69, 514A-84, and 514A-85<sup>1</sup> or the rules of the commission adopted pursuant thereto, it shall issue and serve upon such person a complaint stating its charges in that respect, containing a notice of a hearing upon a day and at a place therein fixed at least thirty days after the service of the complaint. The person so complained of has the right to appear at the place and time so fixed and show cause why an order should not be entered by the commission requiring the person to cease and desist from the violation of the law charged in the complaint. If upon the hearing the commission is of the opinion that this chapter has been or is being violated, it shall make a report in writing, in which it shall state its findings as to the facts, and shall issue and cause to be served on the person an order requiring the person to cease and desist from such violations. The person complained of may, within thirty days after service upon him of the report or order, obtain a review thereof in the appropriate circuit court."

SECTION 7. Section 514A-48, Hawaii Revised Statutes, is amended to read as follows:

**"§514A-48 Power to enjoin.** Whenever the real estate commission believes from satisfactory evidence that any person has violated any of sections 514A-2, 514A-31 to 514A-39, 514A-41, 514A-42, 514A-44 to 514A-49, 514A-62, 514A-63, 514A-65, 514A-68, 514A-69, 514A-84, 514A-85 and 514A-95<sup>1</sup> or the rules of the commission adopted pursuant thereto, it may conduct an investigation on the matter, and bring an action in the name of the people of the State in any court of competent jurisdiction against the person to enjoin the person from continuing the violation or engaging therein or doing any act or acts in furtherance thereof."

SECTION 8. Section 514A-49, Hawaii Revised Statutes, is amended by amending subsection (a) to read as follows:

**"§514A-49 Penalties.<sup>2</sup>** (a) Any person who, in any respect, violates or fails to comply with any of the provisions set forth in sections 514A-2, 514A-31 to 514A-39, 514A-41, 514A-42, 514A-44 to 514A-49, 514A-62, 514A-63, 514A-65, 514A-68, 514A-69, 514A-84, 514A-85, 514A-95, or 514A-102 to 514A-106, or who in any other respect violates or fails, omits, or neglects to obey, observe, or comply with any rule, order, decision, demand, or requirement of the real estate commission under sections 514A-2, 514A-31 to 514A-39, 514A-41, 514A-42, 514A-44 to 514A-49, 514A-62, 514A-63, 514A-65, 514A-68, 514A-69, 514A-84, 514A-85, 514A-95 or 514A-102 to 514A-106, is guilty of a misdemeanor, and shall be punished by a fine not exceeding \$1,000 or by imprisonment for a term not exceeding one year, or both."

SECTION 9. Statutory material to be repealed is bracketed. New statutory material is underscored.<sup>3</sup>

**SECTION 10.** This Act shall take effect upon its approval; provided that section 5 of this Act shall take effect on December 31, 1985.

(Approved June 4, 1985.)

**Notes**

1. Comma missing.
2. So in original.
3. Edited pursuant to HRS §23G-16.5.