

ACT 301

H.B. NO. 3281

A Bill for an Act Relating to Condominiums.

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

SECTION 1. Section 514A-82, Hawaii Revised Statutes, is amended by amending subsection (a) to read as follows:

“(a) 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 sixty-five per cent of all apartment owners vote by mail ballot, or at a special or annual meeting, to reduce 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; and
 - (F) 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, is necessary to adopt decisions binding on all apartment owners and that votes allocated to any area [which] that constitutes a common element under section 514A-13(h) shall not be cast at any association meeting, regardless of 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 governing the details of the operation and use of the common elements[.];
 - (10) The 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 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[.];
 - (12) 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[.];
 - (13) 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[.];
 - (14) No resident manager of a condominium shall serve on its board of directors[.];

- (15) The board of directors shall meet at least once a year[.];
- (16) All association and board of directors meetings shall be conducted in accordance with the most current edition of Robert's Rules of Order[.];
- (17) 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[.]; and
- (18) 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 penalties, if any."

SECTION 2. Section 514A-94, Hawaii Revised Statutes, is amended to read as follows:

"§514A-94 Attorneys' fees, delinquent assessments, and expenses of enforcement. (a) All costs and expenses, including reasonable attorneys' 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; or
 - (3) Enforcing any provision of the declaration, bylaws, house rules, and the Condominium Property Act; or the rules of the real estate commission;
- against an owner, occupant, tenant, employee of an owner, or any other person who may in any manner use the property shall be promptly paid on demand to the association by such person or persons; provided that if the claims upon which the association takes any action are not substantiated, all costs and expenses, including reasonable attorneys' fees, incurred by any such person or persons as a result of the action of the association, shall be promptly paid on demand to such person or persons by the association.

(b) If any claim by an owner is substantiated in any action against an association, any of its officers or directors, or its board of directors to enforce any provision of the declaration, bylaws, house rules, or this chapter, then all reasonable and necessary expenses, costs, and attorneys' fees incurred by an owner shall be awarded to such owner; provided that no such award shall be made in any derivative action unless:

- (1) The owner first shall have demanded and allowed reasonable time for the board of directors to pursue such enforcement; or[.]
- (2) The owner demonstrates to the satisfaction of the court that a demand for enforcement made to the board of directors would have been fruitless.

If any claim by an owner is not substantiated in any court action against an association, any of its officers or directors, or its board of directors to enforce any provision of the declaration, bylaws, house rules, or this chapter, then all reasonable and necessary expenses, costs, and attorneys' fees incurred by an association shall be awarded to the association, unless the action was filed in small claims court or prior to filing the action in a higher court the owner has first submitted the claim to mediation, or to arbitration under part VII of this chapter, and made a good faith effort to resolve the dispute under any of those procedures.

(c) Anyone contracted by the association of apartment owners to collect delinquent assessments against any owner's apartment shall not share in any portion of any penalties or late charges collected."

SECTION 3. Statutory material to be repealed is bracketed. New statutory material is underscored.

SECTION 4. This Act shall take effect upon its approval.

(Approved July 20, 1998.)