

A Bill for an Act Relating to Condominium Property Regimes.

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

SECTION 1. Section 514A-13, Hawaii Revised Statutes, is amended as follows:

1. By amending subsection (b) to read as follows:

“(b) The common interest appurtenant to each apartment as expressed in the declaration shall have a permanent character and shall not be altered without the consent of all of the apartment owners affected, expressed in an amended declaration duly recorded, except as provided in [section] sections 514A-11(12)[-] and 514A-13.4. An amendment which subdivides or consolidates apartments and reapportions the common interest appurtenant to the subdivided or consolidated apartment shall, to the extent provided in the declaration, require the vote or written consent of only the apartment owners of the subdivided or consolidated apartments, their mortgagees, and such other percentage of apartment owners as the declaration may provide. The common interest shall not be separated from the apartment to which it appertains and shall be deemed to be conveyed or encumbered with the apartment even though such interest is not expressly mentioned or described in the conveyance or other instrument.”

2. By amending subsection (d) to read as follows:

“(d) Each apartment owner may use the common elements in accordance with the purpose for which they were intended without hindering or encroaching upon the lawful rights of the other apartment owners, subject to:

- (1) The right of the board of directors, upon the approval of the owners of seventy-five per cent of the common interests, except as provided in section 514A-13.4, to change the use of the common elements;
- (2) The right of the board of directors, on behalf of the association of apartment owners, to lease or otherwise use for the benefit of the association of apartment owners those common elements which are not actually used by any of the apartment owners for an originally intended special purpose, as determined by the board of directors; provided that, except for any leases, licenses, or other agreements entered into for the purposes authorized by section 514A-13.4, unless the approval of the owners of seventy-five per cent of the common interest is obtained, any such lease shall not have a term exceeding five years and shall contain a provision that the lease or agreement for use may be terminated by either party thereto on not more than sixty days written notice;
- (3) The right of the board of directors to lease or otherwise use for the benefit of the association of apartment owners those common elements not falling within paragraph (2) [above], upon obtaining:
 - (A) Except as provided in section 514A-13.4, the approval of the owners of seventy-five per cent of the common elements, including all directly affected owners and all owners of apartments to which such common elements are appurtenant in the case of limited common elements[;]; and
 - (B) The approval of all mortgagees of record on apartments with respect to which owner approval is required by subparagraph (A) [above], if such lease or use would be in derogation of the interest of such mortgagees; and
- (4) The exclusive use of the limited common elements as provided in the declaration.”

SECTION 2. Statutory material to be repealed is bracketed and stricken.
New statutory material is underscored.

SECTION 3. This Act shall take effect upon its approval.

(Approved May 13, 2004.)