

## ACT 128

H.B. NO. 876

A Bill for an Act Relating to Condominiums.

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

SECTION 1. Section 514B-142, Hawaii Revised Statutes, is amended to read as follows:

~~“[§514B-142] Aging in place[;] or disabled; limitation on liability.~~ (a) The association, its directors, unit owners, or residents, and their agents and tenants, acting through the board, shall not have any legal responsibility or legal liability, with respect to any actions and recommendations the board takes on any report, observation, or complaint made, or with respect to any recommendation or referral given, which relates to an elderly or disabled unit owner or resident who[;] may require services and assistance to maintain independent living in the unit in which the elderly or disabled unit owner or resident resides, so that the elderly or disabled unit owner or resident will not pose any harm or health or safety hazards to self or to others, and will not otherwise be disruptive to the condominium community because of [~~the following~~] problems of aging and aging in place[;] or living independently with a physical or mental disability or disabling condition. This section shall apply to elderly or disabled unit owners or residents whose actions or non-actions pose a risk to their own health or safety or to the health and safety of others, cause harm to the resident or others, or where physical or mental abuse may be life-threatening, and who exhibit the following characteristics:

- (1) The inability to clean and maintain an independent unit;
- (2) Mental confusion;
- (3) Abusing others;
- (4) Inability to care for oneself; or
- (5) Inability to arrange for home care[;]
- ~~(6) Loneliness and neglect; or~~
- ~~(7) Inappropriate requests of others for assistance.~~

~~For purposes of this section, “elderly” means age sixty-two and older.~~

(b) Upon a report, observation, or complaint relating to an elderly or disabled unit owner or resident aging or aging in place or living independently with a physical or mental disability or disabling condition, which notes a problem similar in nature to the problems enumerated in subsection (a), the board, in good faith, and without legal responsibility or liability, may request a functional assessment regarding the condition of an elderly or disabled unit owner or resident as well as recommendations for [~~the~~] services from mental health or medical practitioners, governmental agencies responsible for adult protective services, or non-profit or for-profit service entities which the elderly or disabled unit owner or resident may require to maintain a level of independence that enables the owner or resident to avoid any harm to self or to others, and to avoid disruption to the condominium community[;]: provided that when a functional assessment is requested by the board, the unit owner or resident shall be deemed to be the client of the person or entity conducting the functional assessment. The board, upon request or unilaterally, and without legal responsibility or liability, may recommend available services, including assistance from state or county agencies and non-profit or for-profit service entities, to an elderly or disabled unit owner or resident which [~~might~~] may enable the elderly or disabled unit owner or resident to maintain a level of independent living with assistance, enabling in turn,

the elderly or disabled unit owner or resident to avoid any harm to self or others, and to avoid disruption to the condominium community.

(c) There is no affirmative duty on the part of the association, its board, the unit owners, or residents, or their agents or tenants to request or require an assessment and recommendations with respect to an elderly or disabled unit owner or resident when the elderly or disabled unit owner or resident may be experiencing the problems related to aging and aging in place or living independently with a physical or mental disability or disabling condition enumerated in subsection (a). The association, its board, unit owners, or residents, and their agents and tenants shall not be legally responsible or liable for not requesting or declining to request a functional assessment of, and recommendations for, an elderly or disabled unit owner or resident regarding problems relating to aging and aging in place[-] or living independently with a physical or mental disability or disabling condition.

(d) If an elderly or disabled unit owner or resident ignores or rejects a request for or the results from an assessment and recommendations, the association, with no liability for cross-claims or counterclaims, may file appropriate information, pleadings, notices, or the like, with appropriate state or county agencies or courts to seek an appropriate resolution for the condominium community and for the elderly or disabled unit owner[-] or resident.

(e) For the purposes of this section:

“Elderly” means age sixty-two and older.

“Disabled” means a physical or mental impairment that substantially limits one or more major life activities; a record of such an impairment; or being regarded as having such an impairment.

~~(e)~~ (f) Costs and fees for assessments, recommendations, and actions contemplated in this section shall be as set forth in the declaration or bylaws.

~~(f)~~ (g) This section shall not be applicable to any condominium that seeks to become licensed as an assisted living facility pursuant to title 11, chapter 90,<sup>1</sup> Hawaii Administrative Rules, as amended.”

SECTION 2. This Act does not affect rights and duties that matured, penalties that were incurred, and proceedings that were begun, before its effective date.

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

SECTION 4. This Act shall take effect on July 1, 2009.

(Approved June 17, 2009.)

**Note**

1. So in original.