

ACT 71

H.B. NO. 1498

A Bill for an Act Relating to Condominiums.

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

PART I

SECTION 1. Section 514B-154.5, Hawaii Revised Statutes, is amended by amending subsection (a) to read as follows:

“(a) Notwithstanding any other provision in the declaration, bylaws, or house rules, if any, the following documents, records, and information, whether maintained, kept, or required to be provided pursuant to this section or section 514B-152, 514B-153, or 514B-154, shall be made available to any unit owner and the owner’s authorized agents by the managing agent, resident manager, board through a board member, or the association’s representative:

- (1) All financial and other records sufficiently detailed in order to comply with requests for information and disclosures related to the resale of units;
- (2) An accurate copy of the declaration, bylaws, house rules, if any, master lease, if any, a sample original conveyance document, and all public reports and any amendments thereto;
- (3) 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 and monthly statements indicating

the total current delinquent dollar amount of any unpaid assessments for common expenses;

- (4) All records and the vouchers authorizing the payments and statements kept and maintained at the address of the project, or elsewhere within the State as determined by the board, subject to section 514B-152;
- (5) All signed and executed agreements for managing the operation of the property, expressing the agreement of all parties, including but not limited to financial and accounting obligations, services provided, and any compensation arrangements, including any subsequent amendments;
- (6) An accurate and current list of members of the condominium association and the members' current addresses and the names and addresses of the vendees under an agreement of sale, if any. A copy of the list shall be available, at cost, to any unit owner or owner's authorized agent who furnishes to the managing agent, resident manager, or the board a duly executed and acknowledged affidavit stating that the list:
 - (A) Shall be used by the unit owner or owner's authorized agent personally and only for the purpose of soliciting votes or proxies or for providing information to other unit owners with respect to association matters; and
 - (B) Shall not be used by the unit owner or owner's authorized agent or furnished to anyone else for any other purpose;
- (7) The association's most current financial statement, at no cost or on twenty-four-hour loan, at a convenient location designated by the board;
- (8) Meeting minutes of the association, pursuant to section 514B-122;
- (9) Meeting minutes of the board, pursuant to section 514B-126, which shall be:
 - (A) Available for examination by unit owners or owners' authorized agents at no cost or on twenty-four-hour loan at a convenient location at the project, to be determined by the board; or
 - (B) Transmitted to any unit owner or owner's authorized agent making a request for the minutes within fifteen days of receipt of the request by the owner or owner's authorized agent; provided that:
 - (i) The minutes shall be transmitted by mail, electronic mail transmission, or facsimile, by the means indicated by the owner or owner's authorized agent, if the owner or owner's authorized agent indicated a preference at the time of the request; and
 - (ii) The owner or owner's authorized agent shall pay a reasonable fee for administrative costs associated with handling the request, subject to section 514B-105(d);
- (10) Financial statements, general ledgers, the accounts receivable ledger, accounts payable ledgers, check ledgers, insurance policies, contracts, and invoices of the association for the duration those records are kept by the association, and any documents regarding delinquencies of ninety days or more shall be available for examination by unit owners or owners' authorized agents at convenient hours at a place designated by the board; provided that:
 - (A) The board may require unit owners or owners' authorized agents to furnish to the association a duly executed and ac-

knowledgeed affidavit stating that the information is requested in good faith for the protection of the interests of the association, its members, or both; and

- (B) Unit owners or owners' authorized agents shall pay for administrative costs in excess of eight hours per year;
- (11) Proxies, tally sheets, ballots, unit owners' check-in lists, and the certificate of election subject to section 514B-154(c);
 - (12) Copies of an association's documents, records, and information, whether maintained, kept, or required to be provided pursuant to this section or section 514B-152, 514B-153, or 514B-154;
 - (13) A copy of the management contract from the entity that manages the operation of the property before the organization of an association; ~~and~~
 - (14) Other documents requested by a unit owner or owner's authorized agent in writing; provided that the board shall give written authorization or written refusal with an explanation of the refusal within thirty calendar days of receipt of a request for documents pursuant to this paragraph[-]; and
 - (15) A copy of any contract, written job description, and compensation between the association and any person or entity retained by the association to manage the operation of the property on-site, including but not limited to the general manager, operations manager, resident manager, or site manager; provided that personal information may be redacted from the contract copy, including but not limited to the manager's date of birth, age, signature, social security number, residence address, telephone number, non-business electronic mail address, driver's license number, Hawaii identification card number, bank account number, credit or debit card number, access code or password that would permit access to the manager's financial accounts, or any other information that may be withheld under state or federal law."

PART II

SECTION 2. The legislature finds that existing condominium law permits different classes of directors in mixed-use projects and provides for the removal of directors by a majority of unit owners. However, clarification is needed in the law regarding the removal of directors in a mixed-use project.

The legislature further finds that existing law specifies that no votes allocated to a unit owned by a condominium association may be cast for the election or reelection of directors. This prohibition may be an issue for mixed-use condominium projects where directors are elected by different classes of owners. For example, in a mixed-use project that contains residential and commercial units, the board of directors may be comprised of directors elected by residential unit owners and directors elected by commercial unit owners. A condominium association that owns the single commercial unit in a mixed-use project would, therefore, be unable to elect or reelect the directors needed to represent that commercial unit.

Accordingly, the purpose of this part is to:

- (1) Clarify that the removal or replacement of a director elected by a class of unit owners shall be by a majority of only the members of that class; and
- (2) Specify that for an election in a mixed-use condominium project where directors are elected by different classes of owners, an asso-

ciation is permitted to cast a vote or votes allocated to any nonresidential unit owned by the association where those eligible to vote in the election are limited to owners of one or more nonresidential units, including the nonresidential unit owned by the association.

SECTION 3. Section 514B-110, Hawaii Revised Statutes, is amended by amending subsection (h) to read as follows:

“(h) This section shall not preclude the removal and replacement of any one or more members of the board pursuant to section 514B-106(f)[-]; provided that any director elected by a class of unit owners may be removed or replaced only by a vote of a majority of the common interest represented by that class. Any removal and replacement shall not affect the proportionate composition of the board as prescribed in the bylaws as amended pursuant to this section.”

SECTION 4. Section 514B-123, Hawaii Revised Statutes, is amended by amending subsection (c) to read as follows:

“(c) No votes allocated to a unit owned by the association may be cast for the election or reelection of directors[-]; provided that, notwithstanding section 514B-106(b) or any provision in an association’s declaration or bylaws to the contrary, in a mixed-use project containing units for residential and non-residential use, where the board is comprised of directors elected by owners of residential units and directors elected by owners of nonresidential units, the association, acting by and through its board, may cast the vote or votes allocated to any nonresidential unit owned by the association in any election of one or more directors where those eligible to vote in the election are limited to owners of one or more nonresidential units, which includes the nonresidential unit owned by the association.”

PART III

SECTION 5. Section 514B-107, Hawaii Revised Statutes, is amended by amending subsection (b) to read as follows:

“(b) No tenant, resident manager, or employee of a condominium shall serve on its board.

For the purposes of this subsection, “tenant” means any person who occupies a dwelling unit for dwelling purposes who is not also an owner of a dwelling unit in the same condominium.”

PART IV

SECTION 6. This Act does not affect rights and duties that matured, penalties that were incurred, and proceedings that were begun before its effective date.

SECTION 7. Statutory material to be repealed is bracketed and stricken. New statutory material is underscored.

SECTION 8. This Act shall take effect on July 1, 2017.

(Approved July 3, 2017.)