

**ACT 73**

H.B. NO. 239

A Bill for an Act Relating to Condominiums.

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

SECTION 1. The legislature finds that existing law on voting pursuant to a proxy at a meeting of a condominium association specifies that a standard proxy form must contain boxes for a condominium owner to check and indicate

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how a proxy is given. However, proxy forms may sometimes be returned to an association's secretary or managing agent with more than one box checked, or with nothing marked on the proxy form. This situation may lead to confusion over how the proxy should be counted.

Accordingly, the purpose of this Act is to clarify that if a proxy is a standard proxy form authorized by an association, and the proxy is returned with no box checked or more than one box checked, the proxy shall be counted for quorum purposes only.

SECTION 2. Section 514B-123, Hawaii Revised Statutes, is amended to read as follows:

**“§514B-123 Association meetings; voting; proxies.** (a) If only one of several owners of a unit is present at a meeting of the association, that owner is entitled to cast all the votes allocated to that unit. If more than one of the owners is present, the votes allocated to that unit may be cast only in accordance with the agreement of a majority in interest of the owners, unless the declaration or bylaws expressly provide otherwise. There is majority agreement if any one of the owners casts the votes allocated to that unit without protest being made by any of the other owners of the unit to the person presiding over the meeting before the polls are closed.

(b) Votes allocated to a unit may be cast pursuant to a proxy duly executed by a unit owner. A unit owner may vote by mail or electronic transmission through a duly executed proxy. If a unit is owned by more than one person, each owner of the unit may vote or register protest to the casting of votes by the other owners of the unit through a duly executed proxy. In the absence of protest, any owner may cast the votes allocated to the unit by proxy. A unit owner may revoke a proxy given pursuant to this section only by actual notice of revocation to the secretary of the association or the managing agent. A proxy is void if it purports to be revocable without notice.

(c) No votes allocated to a unit owned by the association may be cast for the election or reelection of directors.

(d) A proxy, to be valid, shall:

- (1) Be delivered to the secretary of the association or the managing agent, if any, no later than 4:30 p.m. on the second business day prior to the date of the meeting to which it pertains; and
- (2) Contain at least the name of the association, the date of the meeting of the association, the printed names and signatures of the persons giving the proxy, the unit numbers for which the proxy is given, the names of persons to whom the proxy is given, and the date that the proxy is given~~[-and]~~.

~~(3)~~ (e) If ~~it~~ a proxy is a standard proxy form authorized by the association, the proxy shall comply with the following additional requirements:

- (1) The proxy shall contain boxes wherein the owner ~~has indicated~~ may indicate that the proxy is given:
  - (A) For quorum purposes only;
  - (B) To the individual whose name is printed on a line next to this box;
  - (C) To the board as a whole and that the vote is to be made on the basis of the preference of the majority of the directors present at the meeting; or
  - (D) To those directors present at the meeting with the vote to be shared with each director receiving an equal percentage~~[-]~~;

provided that if the proxy is returned with no box or more than one of the boxes in subparagraphs (A) through (D) checked, the proxy shall be counted for quorum purposes only; and

- (2) The proxy form shall also contain a box wherein the owner may indicate that the owner wishes to obtain a copy of the annual audit report required by section 514B-150.

~~[(e)]~~ (f) A proxy shall only be valid for the meeting to which the proxy pertains and its adjournments, may designate any person as proxy, and may be limited as the unit owner desires and indicates; provided that no proxy shall be irrevocable unless coupled with a financial interest in the unit.

~~[(f)]~~ (g) A copy, facsimile telecommunication, or other reliable reproduction of a proxy may be used in lieu of the original proxy for any and all purposes for which the original proxy could be used; provided that any copy, facsimile telecommunication, or other reproduction shall be a complete reproduction of the entire original proxy.

~~[(g)]~~ (h) Nothing in this section shall affect the holder of any proxy under a first mortgage of record encumbering a unit or under an agreement of sale affecting a unit.

~~[(h)]~~ (i) With respect to the use of association funds to distribute proxies:

- (1) Any board that intends to use association funds to distribute proxies, including the standard proxy form referred to in subsection ~~[(d)(3);~~ (e), shall first post notice of its intent to distribute proxies in prominent locations within the project at least twenty-one days before its distribution of proxies. If the board receives within seven days of the posted notice a request by any owner for use of association funds to solicit proxies accompanied by a statement, the board shall mail to all owners either:

- (A) A proxy form containing the names of all owners who have requested the use of association funds for soliciting proxies accompanied by their statements; or  
 (B) A proxy form containing no names, but accompanied by a list of names of all owners who have requested the use of association funds for soliciting proxies and their statements.

The statement, which shall be limited to black text on white paper, shall not exceed one single-sided 8-1/2" x 11" page, indicating the owner's qualifications to serve on the board or reasons for wanting to receive proxies; and

- (2) A board or member of the board may use association funds to solicit proxies as part of the distribution of proxies. If a member of the board, as an individual, seeks to solicit proxies using association funds, the board member shall proceed as a unit owner under paragraph (1).

~~[(i)]~~ (j) No managing agent or resident manager, or their employees, shall solicit, for use by the managing agent or resident manager, any proxies from any unit owner of the association that retains the managing agent or employs the resident manager, nor shall the managing agent or resident manager cast any proxy vote at any association meeting except for the purpose of establishing a quorum.

~~[(j)]~~ (k) No board shall adopt any rule prohibiting the solicitation of proxies or distribution of materials relating to association matters on the common elements by unit owners; provided that a board may adopt rules regulating reasonable time, place, and manner of the solicitations or distributions, or both."

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SECTION 3. Section 514B-150, Hawaii Revised Statutes, is amended by amending subsection (b) to read as follows:

“(b) The board shall make available a copy of the annual audit to each unit owner at least thirty days prior to the annual meeting which follows the end of the fiscal year. The board shall not be required to submit a copy of the annual audit report to an owner if the proxy form issued pursuant to section ~~[514B-123(d)]~~ 514B-123(e) is not marked to indicate that the owner wishes to obtain a copy of the report. If the annual audit has not been completed by that date, the board shall make available:

- (1) An unaudited year end financial statement for the fiscal year to each unit owner at least thirty days prior to the annual meeting; and
- (2) The annual audit to all owners at the annual meeting, or as soon as the audit is completed, but not later than six months after the annual meeting.”

SECTION 4. Statutory material to be repealed is bracketed and stricken. New statutory material is underscored.

SECTION 5. This Act shall take effect upon its approval.

(Approved July 3, 2017.)