

## 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 the board of directors of each association of apartment owners has broad powers that impact its members, such as adopting and amending budgets for revenues, expenditures, and reserves; hiring and discharging management agents and other independent contractors, agents, and employees; instituting, defending, or intervening in litigation or administrative proceedings affecting the condominium; regulating the use, maintenance, repair, replacement, and modification of common elements; imposing and receiving payments, fees, or charges for the use, rental, or operation of the common elements; imposing charges and penalties, including late fees and interest, for late payment of assessments; and levying fines for violations of the association's declaration, bylaws, and rules and regulations.

The legislature further finds that the boards of directors of associations of apartment owners represent the homeowners in managing a condominium, but the homeowners are vested with the ultimate decision-making power. Clarifying board member responsibilities regarding board meetings and the nature and process of an owner's participation in deliberations or discussions of a board will help foster accountability and transparency for owners and board members in a condominium association.

The purpose of this Act is to:

- (1) Clarify that a violation of specific provisions of the State's condominium law by a condominium board of directors or its officers or members may be a violation of fiduciary duty, but provides a safe harbor provision for a board member who votes for compliance or rescinds or withdraws the violating conduct;
- (2) Balance the right of association members to speak and participate in deliberations and discussions of a board, while ensuring that a board is able to complete its agenda in a timely manner;
- (3) Require the notice for board meetings to include a list of items expected to be on the meeting agenda; and
- (4) Require unapproved final drafts of the minutes of a board meeting to be available within thirty days after the meeting.

SECTION 2. Section 514B-106, Hawaii Revised Statutes, is amended by amending subsection (a) to read as follows:

“(a) Except as provided in the declaration, the bylaws, subsection (b), or other provisions of this chapter, the board may act in all instances on behalf of the association. In the performance of their duties, officers and members of the board shall owe the association a fiduciary duty and exercise the degree of care and loyalty required of an officer or director of a corporation organized under chapter 414D. Any violation by a board or its officers or members of the mandatory provisions of section 514B-161 or 514B-162 may constitute a violation of the fiduciary duty owed pursuant to this subsection; provided that a board member may avoid liability under this subsection by indicating in writing the board member's disagreement with such board action or rescinding or withdrawing the violating conduct within forty-five days of the occurrence of the initial violation.”

SECTION 3. Section 514B-125, Hawaii Revised Statutes, is amended to read as follows:

~~[[§514B-125]]~~ **Board meetings.** (a) All meetings of the board, other than executive sessions, shall be open to all members of the association, and association members who are not on the board ~~[may] shall be permitted to participate in any deliberation or discussion, other than executive sessions, [unless a majority of a quorum of the board votes otherwise.] pursuant to owner participation rules adopted by the board.~~

~~(b) Following any election of board members by the association, the board may, at the board's next regular meeting or at a duly noticed special meeting, establish rules for owner participation in any deliberation or discussion at board meetings, other than executive sessions. A board that establishes such rules pursuant to this subsection:~~

- ~~(1) Shall notify all owners of these rules; and~~
- ~~(2) May amend these rules at any regular or duly noticed special meeting of the board; provided that all owners shall be notified of any adopted amendments.~~

~~[(b)] (c) The board, [with the approval of a majority of a quorum of its members,] by majority vote, may adjourn a meeting and reconvene in executive session to discuss and vote upon matters:~~

- ~~(1) Concerning personnel;~~
- ~~(2) Concerning litigation in which the association is or may become involved;~~
- ~~(3) Necessary to protect the attorney-client privilege of the association;~~  
or
- ~~(4) Necessary to protect the interests of the association while negotiating contracts, leases, and other commercial transactions.~~

The general nature of any business to be considered in executive session shall first be announced in open session.

~~[(e)] (d) All board meetings shall be conducted in accordance with the most recent edition of Robert's Rules of Order Newly Revised. Unless otherwise provided in the declaration or bylaws, a board may permit any meeting to be conducted by any means of communication through which all directors participating may simultaneously hear each other during the meeting. A director participating in a meeting by this means is deemed to be present in person at the meeting. If permitted by the board, any unit owner may participate in a meeting conducted by a means of communication through which all participants may simultaneously hear each other during the meeting, provided that the board may require that the unit owner pay for the costs associated with the participation.~~

~~[(d)] (e) The board shall meet at least once a year. Notice of all board meetings shall be posted by the managing agent, resident manager, or a member of the board, in prominent locations within the project seventy-two hours prior to the meeting or simultaneously with notice to the board. The notice shall include a list of business items expected to be on the meeting agenda.~~

~~[(e)] (f) A director shall not vote by proxy at board meetings.~~

~~[(f)] (g) A director shall not vote at any board meeting on any issue in which the director has a conflict of interest. A director who has a conflict of interest on any issue before the board shall disclose the nature of the conflict of interest prior to a vote on that issue at the board meeting, and the minutes of the meeting shall record the fact that a disclosure was made.~~

"Conflict of interest", as used in this subsection, means an issue in which a director has a direct personal or pecuniary interest not common to other members of the association."

SECTION 4. Section 514B-126, Hawaii Revised Statutes, is amended by amending subsection (c) to read as follows:

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“(c) Minutes of all meetings of the board shall be available within seven calendar days after approval, and unapproved final drafts of the minutes of a meeting shall be available within [~~sixty~~ thirty] days after the meeting; provided that the minutes of any executive session may be withheld if their publication would defeat the lawful purpose of the executive session.”

SECTION 5. Statutory material to be repealed is bracketed and stricken. New statutory material is underscored.

SECTION 6. This Act shall take effect on July 1, 2017.  
(Approved July 5, 2017.)