



DEPARTMENT OF COMMERCE AND CONSUMER AFFAIRS  
REAL ESTATE COMMISSION

# **CONDOMINIUM BOARD MEMBERS POWERS AND DUTIES**

BASED UPON THE HAWAII REVISED STATUTES  
AND AMENDMENTS THROUGH 1991

**NOT FOR RESALE**

Purchased or Funded by  
CONDOMINIUM MANAGEMENT EDUCATION FUND  
REAL ESTATE COMMISSION  
STATE OF HAWAII

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Commission, State of Hawaii.

## *Disclaimer*

This booklet was developed by the Hawaii Real Estate Commission with input from the Blue Ribbon Panel, which is comprised of homeowners' groups, managers, and others involved in the condominium industry. The information contained in this booklet is a brief overview of the rights, duties, and responsibilities of associations and individual owners in condominium developments. In particular, this booklet attempts to define the powers and duties of board members under the governing documents and applicable laws.

Since this booklet will not contain subsequent law changes, it should only be used as a general source of information and is not intended to be a substitute for a careful reading of the law and the condominium documents. If you have general questions about the law or the information in this booklet, you may call the Real Estate Commission's Condominium Specialists at 586-2646. If you have specific questions about a legal issue you should consult an attorney experienced with condominium issues.

Board members acting on behalf of an association should be particularly careful to consult with an attorney about important legal issues. Board members who request and reasonably rely on the advice of professionals, such as attorneys, are usually protected from personal liability by the "*business judgment rule*" discussed later in this booklet.

In most cases, the discussion in this booklet applies to those who own fee simple or leasehold condominiums. Those who need specific information about leasehold condominiums should contact: Housing Finance and Development Corporation, Seven Waterfront Plaza, 500 Ala Moana Boulevard, Suite 300, Honolulu, HI 96813. Telephone: 543-2900, for a copy of the booklet "*A Guide To Hawaii's Residential Leasehold - Condominiums, Cooperatives and PUDs.*"

## *Introduction*

A condominium association is a "*mini-government*" in which apartment owners choose their representatives to the association's board of directors, which in turn is given broad authority to govern and manage the affairs of the association. Depending on the association's governing documents, the board of directors may have power over more aspects of the association members' lives than any other level of government.

Being elected to an association board does **NOT** mean board members can do anything they want. Board members can only do what the law and the association's condominium documents (declaration, bylaws, and house rules) authorize them to do. Board members should be cautious about exercising "*implied*" or "*inherent*" powers which are not clearly stated in the law or condominium documents.

Board members who exceed their authority are likely to face increased liability, including personal liability. For that reason, board members should be familiar with their rights, duties, and responsibilities under the law and their condominium documents.

## **SPECIAL NOTE ON SENATE CONCURRENT RESOLUTION NO. 103**

In 1991, the Legislature adopted Senate Concurrent Resolution 103, which is reproduced below. The resolution urges all public and private agencies involved in the operation and management of condominiums to acknowledge certain basic rights of condominium owners and residents. The resolution briefly and clearly states basic principles for good condominium governance -- the same principles which underlie much of the detailed legislation of recent years.

The principles expressed in the resolution do not have the force of law but should be used as a guide for interpreting both the law and the information in this booklet. Failure to follow those principles generates ill-feeling and disputes. It may also generate additional legislation, which will increase the potential liability for everyone involved in condominium operations and management. Support the Legislature's efforts to encourage, not legislate good condominium governance.

THE SENATE  
SIXTEENTH LEGISLATURE, 1991  
STATE OF HAWAII

**S.C.R. NO.** 103  
S.D. 1

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# **SENATE CONCURRENT RESOLUTION**

**URGING ALL PUBLIC AND PRIVATE AGENCIES ASSOCIATED WITH THE  
OWNERSHIP AND OPERATION OF CONDOMINIUMS TO ACKNOWLEDGE  
CERTAIN BASIC RIGHTS OF THE OCCUPANTS**

WHEREAS, condominium dwellers, whether lessees, renters, or owners, are endowed with basic rights, benefits and privileges which include, but are not limited to, the following:

- (1) To live in privacy without fear of unwarranted intrusion;

- (2) To be informed in a timely fashion of all meetings affecting ownership or tenancy;
- (3) To attend all open meetings of the board of directors of the association of apartment owners, whether regular or special;
- (4) To have proxies counted without manipulation;
- (5) To have proper expenditure of association funds in accordance with required procedures;
- (6) To be free from unreasonable rules or regulations with respect to permitted pets;
- (7) To support minority causes without fear of harassment;
- (8) To have reasonable and equitable enjoyment of common elements;
- (9) To freely express grievances relating to the condominium and the management of its affairs without fear of retribution;
- (10) To have equitable, expeditious, and inexpensive remedies for legitimate grievances as provided by law;
- (11) To be furnished with current versions of all documents, policies, and information affecting ownership or tenancy; and
- (12) To be informed in a timely fashion of all matters and developments which might affect ownership, tenancy, or quality of life as a condominium dweller; and

WHEREAS, these principles and concepts are generally supported by those connected in some manner with the condominium lifestyle; and

WHEREAS, adherence to the spirit of these ideals and standards tends to discourage disputes and resolve issues that arise between the occupants and those who govern condominiums; and

WHEREAS, education rather than litigation is a more effective means for long term resolution of controversy and dissension; now, therefore

BE IT RESOLVED by the Senate of the Sixteenth Legislature of the State of Hawaii, Regular Session of 1991, the House of Representatives concurring, that each agency, organization, institution, firm and individual engaged or interested in condominium occupancy or ownership is urged to maintain an attitude of cooperation and harmony in dealing with all issues that may arise; and

BE IT FURTHER RESOLVED that a certified copy of this Concurrent Resolution be transmitted to the Real Estate Commission and that the Commission make sufficient copies available for distribution as appropriate.

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# **LEGAL BASIS OF THE CONDOMINIUM**

The State of Hawaii, through its Condominium Property Regime Act, Hawaii Revised Statutes, Chapter 514A, provides the framework for the creation and governance of condominium associations. Federal and county requirements may also affect condominium associations.

Federal law affects condominium associations primarily in the areas of fair housing and discrimination, discussed later in the section of this booklet on "Adoption and Enforcement of Rules." County ordinances affect condominium associations primarily in the areas of construction of improvements and use of apartments in the project.

Chapter 514A allows a condominium to be established by the recording or filing of two key documents, the "declaration" and the "bylaws." Most condominiums also have a third document, the "house rules," which do not have to be recorded. Together, the law and these documents define what property is owned and by whom; define the responsibilities of ownership; create a system of governance of the condominium project; and establish a system of rules and restrictions for the use of the project.

## **THE CONDOMINIUM PROPERTY REGIME ACT, CHAPTER 514A**

Chapter 514A states the basic requirements for the contents of the declaration, bylaws, and house rules. Since those three documents are subject to Chapter 514A, they may not contradict its requirements.

This booklet is designed to acquaint board members with certain important provisions of Chapter 514A relating to governance of a condominium association. However, this booklet is not intended as a substitute for a careful reading of Chapter 514A.

Chapter 514A can be found at most public libraries in Hawaii. You may purchase a copy for \$1.50 at 1010 Richards Street in Honolulu or order a copy for the same price, postage included, from: Cashier, Department of Commerce and Consumer Affairs, State of Hawaii, P.O. Box 541, Honolulu, HI 96809.

The Hawaii Legislature considers Chapter 514A to be so important for boards of directors that the law requires an association to provide all its directors with a current copy of the chapter and all amendments (§514A-82(b)(11)). The association also must provide directors with current copies of the condominium documents.

## **BASIC CONDOMINIUM DOCUMENTS ("DECLARATION," "BYLAWS" AND "HOUSE RULES")**

### **A. The Declaration**

A condominium is created when the owner (or owners) of a property execute and record a "declaration" (§514A-11). The declaration is the controlling document which divides the property into apartment units and defines the condominium project. The declaration establishes the percentage of ownership each apartment has in the total project (§514A-11(6)). This percentage is called the "common interest" and will determine each apartment owner's obligation for payment of assessments and voting percentage at association meetings.

In addition, the declaration includes:

- A description of the land on which the condominium project is located.
- A description of the building(s), including the number of apartment units.
- The apartment number of each apartment, its location, area, number of rooms, and designated parking stall, if any.
- A description of the "common elements" and "limited common elements."
- The use of the buildings and apartments, including any restrictions on use.
- The method of amending the declaration. (**NOTE:** In 1991 the Legislature changed the law relating to the percentage of owners required to approve declaration amendments, §514A-11(11). Prior to that time, the law provided that the declaration could be amended only with the approval of not less than 75 per cent of the apartment owners. As a result, some declarations required as many

as 100 per cent of owners to approve an amendment. The 1991 change reduced the percentage of owners required to approve a declaration amendment to no more than 75 per cent, except for projects with five or fewer units, which may still set higher approval requirements. The 1991 change in the law applies retroactively to existing condominiums, giving them the benefit of the reduced approval requirements. All declaration amendments must be recorded.)

## **B. The Bylaws**

The bylaws are a companion document to the declaration. They establish the rules for the operation of the condominium project. As with the declaration, the bylaws must be recorded (§514A-81). Chapter 514A specifies in detail what the bylaws must contain, including provisions for association operations, the meeting process, election procedures, board powers and duties, board meetings, committees, insurance requirements, rule making and the enforcement process (§514A-82).

Bylaw requirements are listed separately in subsections (a) and (b) of Section 514A-82. The requirements of subsection (b) apply to all condominiums in Hawaii, whether or not you find those requirements in your bylaws. Most people agree that the requirements of subsection (a) do not to apply to condominiums already in existence when a particular requirement of subsection (a) was enacted. If you do not find a particular requirement of subsection (a) in your bylaws, the requirement usually does not apply to your condominium. If a question arises as to the applicability of any requirement in subsection (a), you should consult an attorney experienced in condominium law.

Amending the bylaws requires the vote or written consent of 65 per cent of all apartment owners (§514A-82(b)(2)). This percentage is established by law and therefore overrides any other percentage which may be contained in your bylaws.

## **C. House Rules**

The bylaws usually provide authority to the board of directors to establish "house rules" for the governance and control of the common elements of the condominium project (§514A-82(a)(9)). House rules are not intended to be a substitute for the declaration and bylaws, and in the event of a conflict, the declaration and bylaws will

control. House rules define guidelines and limits on the behavior of owners, tenants, and their guests while using the common property ("common elements").

House rules often implement bylaw provisions designed to protect owners and their tenants and guests from annoyance and nuisance caused by improper use of the common elements. For example, the house rules may prohibit such activities as excessive noise, hanging laundry which is visible from outside the apartment, or keeping personal property in the common areas. The house rules may also implement bylaw provisions on what kinds of alterations owners can make to their apartments.

Usually the bylaws permit the board of directors to amend the house rules without owner approval. Sometimes the bylaws require the board to seek owners' comments and input before amending the house rules. Occasionally the board needs owner approval to amend the house rules.

## **LAWS AND RULES APPLY TO ALL**

All persons who use or occupy the condominium project are subject to Chapter 514A as well as the declaration, bylaws and house rules (§514A-87). Apartment owners, their guests, tenants, and employees, and anyone else using the property must obey the conditions and restrictions contained in these documents (§514A-88). Enforcement of these laws and rules may be requested by owners and tenants alike.

## **AVAILABILITY OF CONDOMINIUM DOCUMENTS**

Apartment owners may inspect copies of the condominium documents at the association's or managing agent's office (514A-84.5). The documents which the managing agent must make available include the declaration, the bylaws, the house rules, and the master lease (if any). An apartment owner (or a prospective buyer) may obtain copies of these documents from the association or managing agent during normal business hours for a reasonable charge. (Some title companies can also provide some of these documents.)

# **THE HAWAII REAL ESTATE COMMISSION**

## **THE ROLE OF THE REAL ESTATE COMMISSION**

The Hawaii Real Estate Commission is charged with the responsibility of administering the Condominium Property Regime Act. The Commission, which is part of the Department of Commerce and Consumer Affairs, is involved in a number of activities affecting all segments of the condominium community.

## **POWERS AND DUTIES OF THE COMMISSION**

### **A. Registration of New Condominiums**

Prior to offering units for sale, condominium developers must file with the Real Estate Commission copies of the condominium documents, including the declaration, by-laws, and house rules. These items are examined to determine if they comply with the Condominium Property Regime Act. Before any units are sold, the Real Estate Commission must issue an effective date for the developer's preliminary or final public report on the project (§514A-31). A public report does not constitute an approval or disapproval of a particular project. It is intended to disclose all material facts reasonably available about the project. The developer must provide the report to prospective purchasers. The Commission will not issue an effective date for any public report unless: it adequately discloses all material facts which a prospective purchaser should consider; and the developer has provided adequate protection for the purchaser's funds.

### **B. Enforcement of the Law**

The Real Estate Commission is responsible for enforcing certain provisions of the Condominium Property Regime Act. The Commission's enforcement powers and the provisions it enforces are outlined in Sections 514A-46, 514A-47, 514A-48, and 514A-49. The Commission has the power to investigate the project, the developer, the association, and the managing agent for certain violations of Chapter 514A. The Commission may

also issue "cease and desist" orders after a hearing, bring an action in court to enjoin the person from continuing the violation, and impose fines for violations.

The Commission's main enforcement powers extend to such matters as registration and disclosure requirements for new projects. The Commission has other powers relating to availability of information for owners, record-keeping requirements of the managing agent and the board of directors, the registration and bonding of managing agents and associations, and the handling of association funds.

### **C. Providing Information and Assistance**

One of the Commission's most important roles is providing information and assistance to condominium developers, owners, boards of directors, and the public. The Commission's two "condominium specialists" are available to answer general questions and assist in resolving problems relating to condominium ownership. Their telephone number is 586-2646.

In 1989, a "condominium management education fund" was established for use by the Commission for condominium education. The purpose of the fund is to promote education in the areas of condominium management, registration, and real estate; to improve the administration of condominium associations; and to establish procedures for resolving disputes quickly and inexpensively (§514A-131). Each association with six or more apartments must pay an annual fee to the fund as required by Commission rules (§514A-95.1).

### **D. Resolving Disputes**

The Commission also plays an increasingly important role in resolving disputes and conflicts related to condominium living and governance. Nevertheless, the basic principles of the condominium law remain self-governance and self-enforcement. Owners must govern their own associations and resolve their own disputes.

Disputes may involve one or more apartment owners, the association, the board of directors, the managing agent, the resident manager, and others. Disputes may arise over a range of issues relating to the condition or use of the property, house rules

violations and enforcement, actions of the board or management, claims against owners and residents, employment-related problems, vendor complaints, and neighborhood problems.

The options for resolving such disputes include discussion, mediation, arbitration, and litigation. The Commission promotes informal resolution of condominium disputes without legal action, which can be time-consuming and expensive. The Commission encourages the parties, themselves, to first try to resolve their dispute through discussion and communication. If that is not possible, the parties should consider the Commission sponsored mediation service developed specifically for condominium owners and residents.

#### Commission Sponsored Mediation Service:

The Commission's mediation service brings disputing parties together to discuss their problem. The service is operated through the Neighborhood Justice Center of Honolulu. Mediation provides a controlled setting for discussion and communication by helping the parties focus on issues not personalities and on solutions not blame. Specially selected mediators assist the parties in communicating about the issues, exploring possible solutions, and negotiating mutually acceptable settlements. Parties who agree to mediate cannot be forced to agree to any settlement of a dispute. Mediators do not impose decisions on parties. Instead, mediators try to help the parties make their own decisions.

Mediation is a very effective method in settling disputes before they escalate to the point of arbitration or litigation. Anyone with an unresolved complaint or claim involving the condominium's board, management, residents (owners or tenants), or neighbors, may use the mediation service. Parties pay only a small filing fee to participate in the service. For more information, contact the Neighborhood Justice Center at 521-6767.

Except as noted below, mediation is voluntary. Some boards refuse to mediate because they believe they have nothing to gain. Often they have been advised that the law supports their actions or requires them to follow a certain practice. Those boards may be ignoring the educational benefits of mediation.

Many disputes arise because owners either do not realize how much power the law gives to boards or misunderstand the limitations on that power. In those cases, explaining the board's position in the controlled setting of mediation may prove worthwhile. Mediation may take far less time than prolonged arbitration or litigation with an ill-informed owner who does not understand the broad powers which Hawaii law gives to boards. An owner who does not resort to arbitration or litigation may still subject a board to months of bitter infighting at association meetings. Therefore, a board should carefully considering the educational benefits of mediation before rejecting an owner's request for mediation.

Mediation is mandatory in certain circumstances involving disputes about money claimed by the association (§514A-90(d)). If an owner pays the full amount claimed by the association, the owner has the right to demand mediation to determine the validity of the association's claim and to obtain a refund of any amounts not owed. (An owner may file either for arbitration or in Small Claims Court under the same conditions, if the dispute cannot be resolved by mediation.)

#### Arbitration:

If the parties are still unable to resolve their conflict, Chapter 514A provides mandatory arbitration for certain disputes relating to Chapter 514A, the declaration, bylaws or house rules. The American Arbitration Association conducts the arbitration. Not all disputes can be arbitrated and arbitration of some disputes is subject to restrictions. For example, an owner may only arbitrate a dispute concerning assessments claimed by an association if the owner pays the full amount claimed by the association and keeps all payments to the association current during the arbitration (§514A-90(d), §514A-121(b)(5)).

Arbitration is simply a method of solving disputes by submitting them to an impartial person who has the power to decide the issues in controversy. An arbitration hearing is similar to a court hearing, but usually less formal. Sworn testimony and evidence may be presented, as in a court. The decision of the arbitrator is binding and enforceable in circuit court, although a party who dislikes an arbitrator's decision may appeal or request a new trial in court. Neither appeals nor new trials occur often. Arbitration is appropriate for many condominium disputes. For more information, contact the American Arbitration Association at 531-0541.



### Litigation:

Any condominium-related dispute can be decided in court, although parties may demand arbitration of some disputes (§514A-121). With the exception of Small Claims Court, however, litigation can be expensive and time-consuming, so the Commission encourages owners first to consider mediation or arbitration.

Small Claims Court is a division of District Court in which certain types of claims are settled by a judge in a simple and informal manner. Individuals may ask the clerk of the court for assistance in filing their claims. Parties to a dispute need not (but can) be represented by attorneys, and attorney's fees cannot be charged to the losing party. Parties cannot appeal from judgments of Small Claims Court. Small Claims Court has the power to decide claims for money, usually to a maximum of \$2,500, but has only limited power to order parties to act or not act in a particular way.

For more specific information you should contact the Small Claims Court in your area. You may also ask the court for a copy of the booklet *"Questions & Answers - Your Guide to the Small Claims Court."*

**IMPORTANT NOTE:** An owner who files suit against an association in Small Claims Court and loses is not liable for the association's attorneys' fees. An owner who files suit against an association in any other court and loses can be liable for the association's reasonable attorneys' fees, unless before filing suit the owner first made a good faith effort to resolve the dispute through mediation or arbitration (§514A-94(b)). (An association does not have a similar exemption from liability for attorneys' fees if it sues an owner and loses.)

# **THE ASSOCIATION**

## **BASIC STRUCTURE AND OPERATION**

The operation of a condominium is carried out through its "association of apartment owners," made up of all persons owning apartments in the condominium project. Condominium associations have legally established authority or duties to preserve and maintain common property; to create and enforce rules affecting association living; and to provide other services, such as security, trash pickup, and the like.

The association has powers and responsibilities which are similar to those of local governments. Included in these powers is the power to create laws through the association's bylaws and house rules; to tax through the collection of maintenance fees and assessments; and to impose penalties through fines, late fees, and court action.

As previously discussed in detail, the declaration, bylaws, and Chapter 514A form the legal basis for the "mini-government" of homeowners that is created. These documents are used to establish the framework for the operation of the association. Most associations delegate their powers for the day-to-day operation of the association to a board of directors.

## **MEMBERSHIP IN THE ASSOCIATION**

Membership in the association is mandatory. When apartment owners take title to the condominium unit, they automatically become a voting member of the association of apartment owners and are responsible for their share of the common expenses of the association. Each member's share is always determined by the percentage ownership of the common elements stated in the declaration (the percentage of "common interest"). Membership automatically terminates when title is transferred. Only owners can be association members and all owners must be members.

## **ASSOCIATION MEETINGS**

The bylaws establish the method of calling meetings of the association, as well as what percentage of the owners constitutes a quorum, and what percentage is necessary to adopt decisions binding on all apartment owners, consistent with Chapter 514A. Regardless of what the bylaws state, notice of association meetings must be given to members at least 14 days prior to the meeting (§514A-82(b)(3)). The notice must contain the date, time, and place of the meeting, the agenda, and a proxy form, if appropriate.

If the board or board members intend to use association funds to solicit proxies to elect or re-elect directors, notice of the proposed solicitation must be posted at least 30 days before it occurs (§514A-82(b)(4)). Association meetings usually must be held at the condominium or elsewhere within the State as determined by the board (§514A-82(a)(17)).

Association meetings fall into two categories, "annual" association meetings and "special" association meetings. The function of the annual meeting is to present certain important matters that must be addressed by the entire association for consideration and/or approval. Election of directors, review of the annual financial report, reports of board officers and association committees, amendment of bylaws or declaration, and status of projects proposed or approved at the prior annual meeting are a few of the items often found on the annual meeting agenda.

Special association meetings are held from time to time to address one or more specific items that require membership consideration and approval. Special meetings are generally called by the president or an officer or director of the association. However, the governing documents may allow a special meeting to be initiated by a petition of a specified percentage of apartment owners. In addition, state law allows 25 per cent of owners to petition for a special meeting to remove directors or adopt bylaw amendments (§514A-82(b)(1) and (2)).

# **MANAGEMENT OF THE ASSOCIATION**

## **THE BOARD OF DIRECTORS**

The association is governed by a board of directors elected by the apartment owners to represent them in managing the condominium. The board's primary responsibility is the establishment of policies governing the operations of the association. The board is then responsible for delegating authority to implement the policies it adopts and for the overall supervision of the association's officers, employees, and agents.

**NOTE:** Despite the broad powers given to boards of directors, the owners retain ultimate control through their authority to elect and remove directors.

### **A. Election of Directors**

The condominium bylaws establish the number of board members and the procedures for electing them. The bylaws also outline the powers and duties of the board of directors and the method of determining their compensation, if any. Condominiums developed since 1984 with more than 100 units are required to have a board of at least nine members (unless 65-75 per cent of the owners vote to reduce that number). Unless they resign or are removed, directors serve for whatever term is specified in the bylaws, or until a successor is elected or appointed. Owners cannot be forced to serve on the board, so some associations have to operate with less board members than the law or their bylaws require.

Qualifications and terms of board members vary depending on the bylaws of your association. If no term is specified, directors often but not always, serve an initial term of three years. Directors appointed to fill the unexpired terms of directors who have resigned or been removed often serve until the next election. Depending on the wording of your association's bylaws, directors elected to replace directors who have resigned or been removed may serve for various periods of time. You should check with your attorney if you have any questions.

Many association bylaws state that: each board member must be an apartment owner and belong to the association; representatives of partnership and corporate owners can also serve on the board; and that no single apartment may be represented by more than one board member. In addition, many association bylaws forbid a resident manager from serving as a director. Check your bylaws to determine if these requirements apply to your association.

## **B. Officers**

The officers of the association (president, vice-president, secretary, treasurer) are responsible to the board for the day-to-day operations of the association. Officers are normally elected by and from the board of directors. Generally, the president must be a member of the board, but that is not always true of other officers. As a practical matter, however, the officers and the directors are often the same individuals.

The procedure for the election of officers for the association is outlined in the bylaws. The bylaws must provide for the election of at least a president, secretary, and treasurer (and may provide for other officers). Chapter 514A prohibits any apartment owner from serving as an officer (although not as a director) and, at the same time, as an employee of the managing agent (§514A-82(b)(7)).

The specific roles of the officers are described in your bylaws. Among other duties, the president sets and establishes the agenda and runs the meetings. The vice president assumes the duties and responsibilities of the president in the latter's absence. The secretary is responsible for keeping the minutes of meetings and recording all resolutions. The treasurer must ensure that the financial records and books of account of the association are properly kept. In larger associations, employees of the association or its managing agent usually assist the secretary and treasurer.

Good officers are the key to successful and efficient conduct of board business. Nevertheless, ALL directors should still maintain an active interest in the operations of the association. Directors have the ultimate responsibility for ensuring that the project and association operate in compliance with the law.

### **C. Removal of Directors and Officers**

The bylaws must include a mechanism for removal of directors (§514A-82(b)(1)). Apartment owners may remove any board member at any regular or special meeting of the association, and elect a replacement director. Removal may be with or without cause, although the bylaws often give directors the right to speak on their own behalf, prior to the removal vote.

Under state law, special meetings for the removal of a director may be called by the president of the association or by a petition presented to the secretary or managing agent with the signatures of at least 25 per cent of the owners (§514A-82(b)(1)). If the secretary or managing agent fails to send out notices for the special meeting within 14 days of receiving the petition, then the owners may set the time, date, and place for the meeting and send out notices according to the bylaws. The notice for a special meeting must indicate the meeting is called for the purpose of removing directors. At an annual meeting, owners usually may remove directors without prior notice.

State law does not have any specific provisions on removal of officers. Usually, a board of directors can remove an officer at any time. The association's bylaws may specify additional requirements for removal of officers.

### **D. Meetings of the Board**

Chapter 514A requires that boards meet at least once a year. Whenever practicable, notice of board meetings must be posted at least 72 hours prior to the meeting, or simultaneously with notice to the board (§514A-82(b)(9)). If it is not practicable to post notice, the board should find some other means of giving owners notice of meetings. Board members must be present to vote at board meetings and **CANNOT** vote by proxy.

All board meetings, except for those held in "executive session," are open to all members of the association. Owners may participate in any discussion, unless a majority of a quorum of the board votes otherwise. The board may adjourn a meeting and reconvene in executive session to discuss and vote upon personnel matters or any pending or ongoing lawsuits involving the association. The board must first announce, in

open session, the nature of the business to be discussed in executive session (§514A-83.1).

**NOTE:** The law intends that owners should be present to learn how their association is being run. Executive sessions are permitted for only limited purposes. Therefore, boards who go into executive session just because they do not want owners present may be violating the law. Consult with an experienced attorney if you do not understand when your board may go into executive session.

Although a board may vote not to allow owners to speak at board meetings, many boards permit owner participation, subject to reasonable restrictions. For example, boards may impose time limits on owner statements and require that complex issues be presented to the board in advance or in writing. Some boards set aside time at the beginning of their meetings for owner discussion. Restrictions on owner participation should be stated clearly in advance of a meeting. Otherwise, a board may find itself criticized for trying to suppress owner complaints.

## **PARLIAMENTARY PROCEDURE; ROBERT'S RULES OF ORDER**

Parliamentary procedure is a set of rules for conducting meetings. The bylaws of many associations require that all meetings of the association and the board of directors be conducted according to "*Robert's Rules of Order*." *Robert's Rules of Order* is the recognized standard for parliamentary procedure, and is the basic handbook of operation for most clubs and other organizations today. It allows everyone to be heard and to make decisions without confusion. Even if your association's bylaws do not require that *Robert's* be used, the association or board may wish to adopt *Robert's* to govern their meetings.

All board members should be familiar with *Robert's Rules of Order* or other rules of parliamentary procedure. If used correctly, these rules enable decisions to be made in an orderly manner, which allows for debate, protection of rights, saves time, and promotes democratic rule and flexibility. Board members should also be familiar with Chapter 514A and the association's bylaws concerning conduct of meetings. Specific legal and bylaw

requirements will usually override general rules of parliamentary procedure, such as *Robert's*.

## **VOTING BY PROXY AT ASSOCIATION MEETINGS**

Association members may vote by proxy at association meetings if the proxy is delivered to the association secretary or managing agent by 4:30 p.m. on the second business day before the meeting. The proxy must include the owner's name and signature, apartment number, the name of the person to whom the proxy is given, the date of the meeting, and the date the proxy is given. It is valid only for the meeting to which it pertains, and any adjournments of that meeting (§514A-83.2).

The resident manager and managing agent may not solicit proxies from any owner for their own use. They may vote by proxy only to establish a quorum at association meetings (§514A-82(b)(4)).

Owners may give proxies to individual members of the board of directors or to the board as an entity. A proxy for the board must contain a box to allow the owner to indicate that the vote is to be shared equally among all board members. If the owner does not so indicate, then the proxy will be voted according to the preference of a majority of the board (§514A-83.2).

If a board member intends to use association funds to solicit proxies for the election or reelection of board members, the proxy must specifically authorize the use of the proxies for that purpose. In addition, the board must post notice of its intent to solicit proxies at least 30 days in advance of the solicitation. All apartment owners then have the right to request the association to solicit proxies on their behalf if the owners inform the board within seven days of the notice being posted. With their request, owners may each submit a statement of 100 words or less giving their qualifications to serve on the board and reasons for wanting to receive proxies. The association must then send the statements to all owners with either (1) a proxy form containing the names of the owners who are soliciting proxies, or (2) a blank proxy form accompanied by a list of the owners' names (§514A-82(b)(4)).



# BOARD MEMBERS POWERS AND DUTIES

## GENERAL

The board of directors has the ultimate responsibility for the operation of the association on behalf of the owners. Although the board can delegate authority to others, such as managing agents, it cannot delegate that responsibility. In meeting its responsibility, the board has certain significant duties or obligations to the owners which also must be performed.

### A. Familiarity with Legal Documents

As previously discussed, Chapter 514A and the condominium documents form the primary basis for the definition and scope of the board's power and responsibilities. Board members need to be familiar with Chapter 514A, as well as with the association's declaration, bylaws, and house rules. A good understanding of those documents is essential to the board members' ability to carry out their duties under the law.

**NOTE:** Being elected to the board does NOT mean you can do anything you want. Your actions must be based on a power given to you by the law or the condominium documents. You may be liable if you act or authorize action not permitted by the law or those documents.

### B. Fiduciary Duty of Directors

Chapter 514A provides that every director owes the association a "fiduciary duty" in the performance of the director's responsibilities (§514A-82.4). A fiduciary relationship is a special type of relationship which arises when the confidence, trust, and reliance of one party is placed upon the judgment and advice of another. A fiduciary is bound to protect the interests of the parties relying on them.

As fiduciaries, directors have a duty to act in good faith and to place the interests of the apartment owners above their own interests at all times. Officers and directors are held to this high standard of conduct, the breach of which may subject each or all of them to personal liability, even if they are acting on behalf of the association. The fact that

officers or directors are part-time volunteers does not excuse them from their fiduciary duty.

### **C. Conflicts of Interest**

Fiduciary duty includes a duty of undivided loyalty and honesty in voting on any matter where conflicts of interest or self-dealing could arise. A director must not permit another duty or interest to prevent the director from making an independent decision based on the best interests of the association. Directors must disclose any conflict of interest prior to voting on the matter at the board meeting (§514A-82(b)(5)).

Conflict of interest can be a confusing concept. It usually arises if a director has a personal or financial interest in the matter which is the subject of a board decision. For example, if the association is contemplating entering into a business transaction with a company in which the director has a financial interest, the director must disclose that fact and should abstain from voting. The director's disclosure must be recorded in the minutes of the meeting (§514A-82(b)(5)).

Another typical conflict of interest occurs when directors are members of a hotel operation which rents association property, such as a front desk area. In that situation, those directors should be particularly careful to ensure that the association receives a fair rent for the property. The board may wish to create a committee of disinterested board members or owners to make recommendations on rent to the board.

### **D. Delegation of Responsibility**

An important aspect of the director's fiduciary duty is the supervision of those persons to whom the board has delegated responsibility for the day-to-day operation of the condominium project. Although the board may delegate certain responsibilities to the officers, managing agent, resident manager, or committees, the board must still ensure that association business is conducted in accordance with the law and condominium documents.

Many people, including board members, mistakenly believe that the managing agent is solely responsible for everything relating to the management and operation of the

condominium project. Nevertheless, board members can be held liable for the actions of agents and employees of the association.

### **E. Business Judgment Rule**

In judging the actions of directors, courts frequently apply a test called the "business judgment rule." This rule requires that board members exercise the same degree of care and skill in making decisions or taking actions that would be expected of an ordinary prudent or "reasonable man" in a similar business. This means that directors should adequately research and carefully examine the alternatives, costs, and risks of a particular decision. The process a board follows in making a decision may ultimately be more important than the decision the board makes.

The business judgment rule recognizes that board members will not always make the right decision, but if they follow the requirements of the rule, they will usually not be personally liable for their actions on behalf of the association. Board members should remember the following important points about the business judgment rule:

- (1) Be informed about the association's business generally. Before making an important decision, research and consider all relevant information reasonably available to you and discuss it with your fellow board members. Consult experts if you do not have the expertise to deal with an issue. Then act reasonably and rationally;
- (2) Attend and participate in meetings, and be sure absences are recorded in the minutes;
- (3) Register dissents in the minutes when in disagreement with board actions;
- (4) Act in the best interests of the association, not yourself. The principles of conflict of interest apply. You should avoid voting on matters in which you are on both sides of the transaction or from which you will derive financial benefit over and above that derived by other owners. You may have problems convincing anyone that you acted in the best interests of the association if your decision primarily benefited yourself.

- (5) Do not exceed your authority. Be knowledgeable about the law and the association's condominium documents. In particular, consult an knowledgeable attorney if you are not sure that legally you can or should do what you plan to do. The expense of an attorney's advice before you act may be far less than the expense of litigation if your actions exceed your authority.
- (6) Do something. The rule will not protect you if you fail to act. If you do nothing, it should be only because you carefully considered the issue and consciously decided to do nothing, not because you ignored the issue in the hope that it would go away. Making the wrong decision may be less damaging than making no decision at all.

## **HIRING MANAGING AGENTS; MANAGEMENT OF THE CONDOMINIUM**

The board is responsible for both the upkeep and protection of the property's physical assets, as well as keeping the association's finances in a healthy state. Since many board members are unpaid volunteers, they often turn to the services of a managing agent to handle the day-to-day operations of the condominium. Alternatively, boards may hire employees to assist in the operation of the property.

The board's authority to hire a managing agent is usually found in the bylaws or declaration. Boards need to ensure that managing agents they hire meet the following qualifications:

- (1) Be a licensed real estate broker or a trust company authorized to do business in Hawaii;
- (2) Register annually with the Real Estate Commission and pay the required fees;
- (3) Obtain a fidelity bond to protect against the loss of association funds or property caused by the fraudulent or dishonest acts of the agent's employees (§514A-95).

The above requirements apply only to independent contractors who assist the board in the operation of the property. An employee of the association, even if she performs the same functions as a managing agent, its not considered a "managing agent." Contact the

Commission at 586-2646 if you have questions or wish to confirm that a your managing agent meets all the requirements of the law.

Chapter 514A provides that every managing agent is a fiduciary with respect to the property the agent manages (§514A-95(c)). As with board members, the fiduciary duty of the managing agent requires that the agent act with diligence, care, and skill, and make decisions in the best interests of the association and its owners.

The managing agent is responsible for carrying out all duties agreed to in its contract with the association. These duties may include financial management, such as payment of bills and the preparation of monthly financial statements, as well as physical management. Physical management includes routine inspections of the property, maintenance, repairs and improvements, coordination of all of the various goods and services needed to operate and maintain the property, and meeting the insurance and other needs of the project.

**NOTE:** The law does not specify in detail what services a managing agent must perform for an association. Therefore, the board should review its contract with the managing agent to determine what services the managing agent will perform. If the board desires additional services, it should ensure that the contract clearly indicates that the managing agent will provide those services. Otherwise, disputes and ill-feeling may arise.

As in many things, you get what you pay for. The cheapest managing agent will not always provide the best service.

## **ANNUAL REGISTRATION OF THE ASSOCIATION**

All associations comprised of six or more apartments are required to register annually with the Real Estate Commission. The association must pay an annual registration fee and submit the following information: proof of fidelity bond, the names and positions of persons who handle association funds, the name of the managing agent, the mailing address of the project, and the name, business address and phone number of a contact person for the association.

Failure to pay the registration fee may result in additional fines. Any association not complying with the registration requirements, or whose registration is terminated by the Commission, will not be allowed to bring any action in a Hawaii court until it registers.

## **INSURANCE**

The association, through its board of directors, is responsible for securing adequate insurance coverage for the condominium. The law requires the association to obtain and maintain a policy of fire insurance to cover the common elements and all exterior and interior walls, floors and ceilings of the condominium project, as originally built. (Additional improvements made by owners are not necessarily covered). Flood insurance is also required if the project is located in a flood hazard area. The insurance policy must be in the name of the Association and the premiums are common expenses (§514A-86). The declaration or bylaws may contain additional insurance requirements for liability and property insurance, which you should review carefully.

Liability insurance is important to provide adequate protection from liability suits that may be the result of the use of common areas or acts of the association or its officers. Types of insurance available to cover the association include general liability insurance and liability insurance for directors and officers. The law requires a fidelity bond for person who handle association funds (unless the Commission grants an exemption).

Board members need to understand the extent of coverage and exclusions for losses and actions not covered in the project's various policies. Also important is a clear distinction of where the association's coverage under its policies ends and where an individual apartment owner's coverage begins. Failure to have adequate insurance can create considerable problems for associations. Boards who deliberately decide to secure less than the required insurance may find themselves exposed to considerable personal liability. **INSURANCE CAN BE VERY IMPORTANT.** Specific questions should be directed to an experienced insurance agent.

## **FINANCIAL MANAGEMENT**

### **A. Keeping Financial Records**

One of the board of director's most important responsibilities is managing the financial affairs of the association. Accurate records are essential to the proper financial management of association funds. The managing agent or the board is required by law to keep detailed, accurate records listing all receipts and expenditures affecting the common elements and monthly statements of delinquent assessments (§514A-85). The statement of receipts and disbursements shows how much money was taken in by the association, and provides the details of how the association spent its money. The financial statements are usually prepared monthly by the managing agent. If you do not understand them, ask the managing agent to explain.

Boards should adopt adequate financial controls to protect themselves and association members. The business judgment rule applies in this area. Boards should review and independently confirm account balances. They should require two signatures on large checks and on transfers to and from association reserve accounts. They should encourage association members not to waive the audit required by law (see below).

### **B. Fidelity Bond Requirement**

For condominium projects having six or more units, the association must obtain a fidelity bond each year to cover all officers, directors, employees, and managing agents who handle the funds of the association (§514A-95.1). The purpose of the bond is to protect the association against fraud or dishonesty on the part of those handling association funds. Associations with 20 apartments or less, may apply to the Commission for a bond exemption.

### **C. Annual Audits**

Chapter 514A also requires a yearly audit of association financial accounts and at least one yearly "unannounced" verification of the association's cash balance by a public accountant. If an association is comprised of less than 20 owners, a majority of ALL the apartment owners may waive this requirement at an association meeting (§514A-96).

The board must make a copy of the annual audit available to the owners at least thirty days prior to the association's annual meeting. The association's official proxy must include a box for owners to indicate if they would like a copy of the annual audit or a summary of it. The board need only send copies of the audit or summary to those owners who mark the box on the proxy. If the annual audit is not completed thirty days before the meeting, the board must provide requesting owners with: (1) an unaudited year-end or year-to-date financial statement at least thirty days before the meeting; and (2) a copy of the annual audit by the date of the meeting or as soon as the audit is completed, whichever occurs later (§514A-96(b)).

The audit and surprise cash verification are generally conducted by independent public accountants and are intended to assure all members of the association that the financial statements, as prepared, correctly reflect the financial condition of the association. Boards should encourage association members not to waive the audit. Not only does the audit confirm the association's financial condition, it also protects board members from subsequent complaints that they mishandled the financial affairs of the association.

#### **D. Budgeting and Assessments**

The cost of operating and maintaining the condominium is funded through budgeting and assessing procedures carried out by the association. The sole source of income for many associations is regular periodic assessments, often called "maintenance fees," levied on all owners in the project.

The amount of an apartment owner's fee is determined by the owner's interest in the common elements (the "common interest") as set forth in the declaration (§514A-15). All owners **MUST** pay the assessments (§514A-90(c)); they cannot be avoided simply by not utilizing various common facilities (§514A-92). Assessments cannot be withheld or put into escrow because owners do not think they owe them or disagree with board policies. The manager or the board of directors is responsible for notifying the owners in writing of any maintenance fee increases at least 30 days in advance (§514A-92.2).



An apartment owner who disputes the amount of an assessment may request a written statement clearly indicating:

- (1) The amount of common expenses included in the assessment, including the due date of each amount claimed;
- (2) The amount of any penalties, late fees, lien filing fees, and any other charges included in the assessment; and
- (3) The amount of attorneys' fees and costs, if any, included in the assessment.

The statement must also inform the owner of the owner's rights under the law; namely, that:

- (1) Hawaii law gives apartment owners no right to withhold assessments for any reason;
- (2) An apartment owner has a right to demand mediation or arbitration to resolve disputes about the amount or validity of an association's assessment, provided the apartment owner immediately pays the assessment in full and keeps assessments current; and
- (3) Payment in full of the assessment does not prevent the owner from contesting the assessment or receiving a refund of amounts not owned (§514A-90(c)).

An apartment owner who pays an association the full amount it claims also may file in Small Claims Court to resolve disputes concerning the amount or validity of the association's claim (§514A-90(d)).

Regular assessments cover the day-to-day costs of running the association, which may include repairs and maintenance costs, insurance, reserve funds, security, and the operation of common recreational facilities such as swimming pools and tennis courts. The law gives the board wide discretion in determining the level and timing of repairs and improvements, although the bylaws may impose restrictions.

Major repairs, new construction, or a one-time, unanticipated expense may require the board to levy a special assessment. The need for special assessments can be alleviated by careful long-range planning and by building reserves to fund improvements.

In 1991 the Legislature passed legislation (Act 132) requiring association boards to adopt an annual budget and establish adequate reserves beginning January 1, 1993. The board must distribute the budget it adopts to the owners and may not exceed the budget by more than 20 per cent in a fiscal year, except in an emergency situation. "Emergency situation" is defined as an extraordinary expense: (1) required by a court order; (2) required to repair association property which poses a threat to personal safety; or (3) required for a repair to association property which the board could not have reasonably anticipated when preparing the budget. (An association's condominium documents may also impose similar requirements.)

Individuals purchasing a condominium unit can be held liable for the seller's share of all unpaid assessments for common expenses up to the time of the transfer. Owners and prospective buyers may obtain a statement of the amount of unpaid assessments from the manager or the board of directors (§514A-91).

In the event that an owner loses the unit through foreclosure, the buyer in foreclosure is not liable for assessments charged to the unit and still owing prior to the foreclosure. The unpaid share of expenses will be a common expense allocated among all of the units, including the foreclosed unit (§514A-90(b)).

#### **E. Reserve Account**

Reserves are an essential part of the association's annual operating budget. They are generally collected with the regular assessments and set aside in a separate account for the future.

The reserves should cover the cost of all major repairs and replacements of the common elements. Insufficient reserves can result in the board levying an especially burdensome special assessment, borrowing the funds, or even deferring the necessary repairs.

With respect to a board's responsibility to establish adequate reserves as part of the annual budgeting process, the new law requires a board: (1) to state in the annual budget the association's existing reserves; (2) to calculate how much the association should have in reserves ("a reserve study"); and (3) to assess owners and establish the proper amount of reserves, subject to the following temporary exceptions:

- (1) An association coming into existence after January 1, 1993, need not begin assessing for reserves until the fiscal year following the association's first annual meeting;
- (2) An association already in existence on January 1, 1993, will have up to 5 years to bring its reserves up to the level required by its reserve study; and
- (3) An association which substantially depletes its reserves in an emergency will have up to 2 years to bring its reserves back to the level required by its reserve study.

The new legislation exempts from liability anyone whose good faith estimate of an association's reserve requirements subsequently proves to be incorrect.

The board may borrow money to be used by the association for the maintenance, operation, or improvement of the common elements of the project. The board must comply with any approval requirements or spending limits specified in the law, declaration or bylaws. The costs of borrowing become a common expense of the association if the owners of 50 per cent of the common interest AND 50 per cent of the apartments give their written consent. Regardless of any approval requirements or spending limits in an association's declaration or bylaws, this special, double approval requirement must be met if a loan is to be made (§514A-82.3).

#### **F. Investment of Association Funds**

Chapter 514A contains specific requirements for the investment and handling of association funds. These funds may ONLY be (1) deposited in a federally-insured account in a financial institution located in Hawaii, (2) held by a trust company authorized to do business in Hawaii, or (3) invested in U. S. government securities, such as treasury

bills. Records of deposits and disbursements must be kept and funds may only be disbursed by an association employee or agent under the board's supervision (§514A-97). Insurance companies and securities dealers/brokers are not "financial institutions" for purposes of this rule. Therefore, they may not hold, manage, or invest association funds.

In managing and investing association reserves, a board's primary concern should be the security of the funds. Obtaining the maximum rate of return may serve little purpose if the funds are not available when needed.

Security includes not only where the funds are invested but also who has control of them. As noted previously, boards should adopt adequate financial controls to protect themselves and association members. Boards should review and independently confirm account balances. Boards also should require at least two signatures on large checks and on transfers to and from association reserve accounts. Large losses have occurred in the past because boards failed to adopt elementary financial controls.

As a general rule, funds kept in the condominium's general operating account may not be "commingled" (intermixed) with other funds such as lease rent collections and rental operations unless the requirements of Section 514A-97(b) are met. The managing agent must hold association funds in a client trust account and, of course, may not commingle association funds with the agent's own funds.

Directors may not use association funds for travel, director's fees, or per diem expenses without obtaining the approval of a majority of the apartment owners (§514A-82(b)(10)).

## **ADOPTION AND ENFORCEMENT OF RULES**

The board usually has the responsibility to adopt house rules, unless the bylaws give owners that right. The board enforces the house rules. These rules make possible a harmonious living situation within the condominium community. They should be enforced uniformly and consistently as to all violators, and according to specific, well-published standards and criteria. The board should ensure that all owners know the contents of the house rules.

Again, remember that house rules are intended to implement bylaw provisions governing the use of common elements. House rules are not intended to substitute for bylaws (or the declaration) or impose restrictions not authorized in those documents.

**NOTE: Fair Housing and Anti-discrimination Laws.** All house rules and the provisions of the association's declaration and bylaws should be carefully examined to ensure they do not contain provisions which might be discriminatory. Federal and State laws prohibit discrimination by condominium associations and their agents and employees on the basis of sex, race, color, ancestry, religion, handicap, marital status, and parental status (children in the family). The Federal Department of Housing and Urban Development ("HUD") has broad powers to investigate and prevent discrimination, including the power to impose substantial fines. The Hawaii Civil Rights Commission ("HCRC") has similar powers.

Examples of discriminatory rules include those which restrict children, but not adults from certain activities, such as using the swimming pool or other project facilities. Rules which excessively restrict the number of people who may occupy a unit in a condominium project also may be discriminatory if they effectively restrict parents with children from living in the project.

In addition, rules which impact handicapped residents may be deemed discriminatory. For example, it may be discriminatory to prevent a resident who has respiratory problems from installing an air-conditioner, even if the condominium rules prohibit air-conditioners. Also, handicapped residents may have a right to install ramps, handrails, and similar improvements to enable them to have full use of the project or their unit.

Any questions about discrimination should be directed to HCRC at 586-8636 or HUD at 541-1329.

## **ASSOCIATION DOCUMENTS AND RECORDS**

### **A. Making Documents and Records Available to Owners**

All owners have the right to obtain copies of the condominium documents. As previously noted, the board should ensure that the association or its managing agent makes available, for a reasonable fee, copies of the declaration, bylaws, house rules, master lease, a sample conveyance document, and public reports (§514-84.5).

The association's most current financial statement and minutes of board meetings must be made available to any owner at no cost, or on 24-hour loan, at a convenient location designated by the board (§514-83.5). The board or managing agent must maintain accurate and detailed financial records of any receipts or expenses affecting the common elements and any unpaid assessments. These records must be kept at a location determined by the board and cannot be disposed of for at least five years (§514-85).

Owners may also examine most other relevant association documents including financial records, insurance policies, and contracts. Owners have the right to view documents relevant to association meetings, such as proxies, tally sheets, and ballots, for 30 days following the meeting. In some cases, the board may require the owner to furnish an affidavit stating that the information is requested in good faith (§514-83.5).

The Real Estate Commission will enforce owners' rights to see all relevant information which the law requires to be made available. The board does not have a right to withhold such information.

### **B. Membership List**

The board of directors must keep an accurate, current list of all association members and their addresses. The board may delegate this responsibility to the resident manager or the managing agent. Association members can obtain a copy of the list at reasonable cost, as provided in the condominium documents, or by submitting an affidavit stating that the owner intends to use the list for soliciting votes or proxies or disseminating association information to members and not for any other purpose.

### **C. Amendment of the Bylaws**

As previously noted, amendment of the bylaws requires the vote or written consent of 65 per cent of all owners (written consent may be given without a meeting). The board of directors may propose amendments or amendments may be proposed by the petition of 25 per cent of the apartment owners. Within 30 days after receiving a petition, the board must mail the proposed bylaws and ballots to all owners. If the proposal is defeated, the owners must wait one year before submitting a similar proposed amendment, unless they do so at an annual meeting. Any owner may propose an amendment to the bylaws at the annual association meeting (§514-82(b)(2)).

Bylaw amendments adopted by the association are not effective until they are recorded (§514-81). The board of directors is responsible for recording all bylaws amendments. If the owners properly approve bylaw valid amendments, neither the board nor its officers can refuse to record those amendments because they do not agree with them. Except as indicated in the following section, decisions on amending bylaws are those of the owners, not the board.

### **D. Restating the Bylaws and Declaration**

The board, by resolution, may restate the declaration or bylaws to include all previous amendments, or to conform them to the provisions of any federal, state, or county laws, rules and ordinances. The "restated" declaration or bylaws must be recorded and upon recordation, supersedes the original and all prior amendments (§514-82.2).

**NOTE:** The board may ONLY restate the declaration or the bylaws to: (i) comply with federal, state, or county requirements; or (ii) incorporate amendments previously approved by the association. The board may NOT restate the declaration or bylaws to make changes not required by law. That power is reserved to the owners. Moreover, if the board's restatement does not correctly restate the requirements of the law, the restatement may be challenged and ruled invalid. Consult an experienced condominium attorney if you are not sure about the board's rights to restate the association's documents.

## **CONCLUSION**

The board of directors has broad authority to manage the affairs of the condominium association. The board governs the association, establishes policies and rules, ensures the accuracy of financial and administrative records, maintains the common elements, and promotes a quality environment for all residents. Because of the critical role the board plays in the life of the association, board members need to be aware of their responsibilities and familiar with the law and the condominium documents.



# GLOSSARY

(See §514A-3)

**AMENDMENT:** A written statement reflecting a formal change or revision in the declaration, bylaws or other document governing the condominium.

**APARTMENT:** The part of the condominium property which is individually owned. The apartment may include nonresidential areas such as a parking space, storage room, balcony, terrace or patio. In many condominium projects, however, these nonresidential areas may be "limited common elements," and may be subject to regulation by the association. See LIMITED COMMON ELEMENTS.

**APARTMENT OWNER:** Person or persons (including corporations and partnerships) owning a condominium apartment and the percentage of common interest pertaining to that apartment. Every apartment owner is a member of the association.

**ARBITRATION:** A method of settling legal disputes other than litigating the matter in court. The matter is submitted to an impartial third party called an "arbitrator" (or a panel of arbitrators) whose decision is binding, but subject to court review.

**ASSESSMENT (REGULAR):** An apartment owner's proportionate share of the amount of money required to pay the expenses of the association and to maintain the common elements of the condominium. This charge is typically paid monthly and is also called a "maintenance fee."

**ASSESSMENT (SPECIAL):** An assessment made for a special purpose, such as making major repairs, or because of inadequate budgeting of operating expenses. Special assessments are in addition to regular assessments for operating expenses ("maintenance fees").

**ASSOCIATION OF APARTMENT OWNERS:** All of the apartment owners acting as a group in accordance with the declaration and bylaws for the operation of the condominium project. The voting rights of each owner in the association is determined by his or her percentage of common interest in the condominium.

**AUDIT:** A formal examination and checking of accounts or financial records to verify their correctness. Chapter 514A requires a yearly audit of association financial accounts by a public accountant (unless this requirement is waived by a majority of all apartment owners at an association meeting).

**BOARD OF DIRECTORS:** The governing body of the condominium association elected periodically by the apartment owners to administer the affairs of the association.

**BOARD MEETINGS:** Gathering of a quorum of the members of the board of directors for the purpose of conducting condominium business. Board meetings must be held at least once a year and, except for "executive sessions," are open to all apartment owners.

**BYLAWS:** The document which contains the operating procedures for the condominium project. The bylaws provide for administration of the association, meetings, quorums, voting, and other rules relating to the association. The bylaws may be amended by the vote or written consent of 65 per cent of all apartment owners. Chapter 514A specifies in detail what provisions the bylaws must contain.

**COMMISSION (REAL ESTATE):** The state agency responsible for administering the Condominium Property Regime Act. The Commission is part of the Department of Commerce and Consumer Affairs.

**COMMON ELEMENTS:** The portion of the condominium project which is not included in the apartment unit and which is owned jointly by all apartment owners. Common elements may include: the land, main walls, roofs, hallways, recreational facilities, utility installations, and the like. Maintenance of the common elements is paid for by the association and each owner must pay a monthly maintenance assessment according to the owner's percentage of common interest.

**COMMON EXPENSES:** The operating expenses of the condominium property, together with all other sums designated as common expenses by or pursuant to Chapter 514A, the declaration, or bylaws.

**COMMON INTEREST:** The percentage of undivided ownership in the common elements belonging to each condominium apartment, as established in the declaration. The percentage of common interest determines the amount an owner will be assessed for

maintenance of the common elements, and the number of votes an owner has in the condominium association. The common interest may vary with the size of the apartment, but need not be proportional with the size or value of the apartment.

**CONDOMINIUM:** A form of ownership of real property consisting of (1) ownership of an individual apartment unit, and (2) an undivided interest in the common elements. Each condominium apartment may be sold separately from all other apartments, but not be sold separately from its appurtenant common interest.

**CONDOMINIUM PROPERTY REGIME ACT:** The law which forms the legal basis for the condominium in Hawaii, found at Chapter 514A, Hawaii Revised Statutes. This law permits the creation of the condominium form of ownership and establishes the basis for determining ownership interest, the rights and obligations of the owners, and the duties and powers of the association and the board of directors.

**DECLARATION:** The document which establishes the property as a condominium. The declaration must be recorded at the Bureau of Conveyances or filed in Land Court in order to create a condominium under Chapter 514A. The declaration contains legal descriptions of the property, including the units. It also describes the common elements and each apartment owner's undivided share in the common elements.

**FIDELITY BOND:** A fidelity bond is purchased from an insurance or bonding company to cover persons who are entrusted with sums of money or are responsible for valuable assets. The purpose of the bond is to protect against fraud or dishonesty on the part of such persons.

**FIDUCIARY:** A relationship which implies a position of trust or confidence wherein one person is usually entrusted to hold or manage property for another. Condominium board members owe a fiduciary duty to the association. As fiduciaries, directors must act in good faith and in the best interest of the apartment owners at all times.

**HOUSE RULES:** Rules of conduct adopted by the board of directors of the association (or sometimes by the owners). The house rules usually implement bylaw provisions governing the use of common elements and try to promote harmonious living among the owners, tenants, and their guests.

**LIMITED COMMON ELEMENTS:** A portion of the common elements reserved for the use of a particular apartment or apartments to the exclusion of all other apartments. For example, a lanai, which is not part of the apartment to which it is attached, but can be used only by that apartment, may be a limited common element. The limited common elements are described in the declaration.

**MAJORITY OR MAJORITY OF APARTMENT OWNERS:** The owners of apartments representing more than 50 per cent of the common interest (as opposed to 50 per cent of the number of apartments in the condominium). Note: "Majority of those present" or "Majority of a quorum" can be less than 50 per cent of all owners.

**MANAGING AGENT:** An independent contractor retained by the association to manage the operation of the condominium project. Every managing agent is a fiduciary with respect to the property the agent manages. Every managing agent must also be licensed as a real estate broker (except Hawaii trust companies), registered with the Real Estate Commission, and have a fidelity bond. Employees of the association who manage the operation of the property are not considered managing agents.

**PARLIAMENTARY PROCEDURE:** A set of rules for the orderly conduct of meetings. Unless the law or association bylaws state different rules, all meetings of the board and association must be conducted according to "*Robert's Rules of Order*," the recognized standard for parliamentary procedure.

**PERCENTAGE OF OWNERSHIP:** The percentage of ownership each apartment has in the common elements. Each apartment has an assigned percentage, which is also known as the "common interest." The total percentage of all apartments should equal 100.

**PUBLIC REPORT:** A report issued by the Hawaii Real Estate Commission disclosing all material facts that the prospective purchaser of a new condominium project should know before buying a unit. The public report may take the form of a preliminary, final, or supplementary report.

**PROXY:** Written authorization for one person to act or vote for another at a meeting of the association of apartment owners.

**QUORUM:** The minimum number of people who must be present before a specified meeting can officially take place or authorized business can be transacted.

**RESERVES:** Money set aside to repair or replace common elements, such as roofs, at some future date.

**UNDIVIDED INTEREST:** The percentage of common elements owned by the apartment owner and also known as the common interest. The apartment cannot be purchased or sold separately from its undivided ownership interest in the common elements.

**UNIT:** The part of the condominium property which is individually owned. See APARTMENT.