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## A BILL FOR AN ACT

RELATING TO CONDOMINIUMS.

**BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF HAWAII:**

1           SECTION 1. Section 514B-104, Hawaii Revised Statutes, is  
2 amended by amending subsection (a) to read as follows:

3           "(a) Except as provided in section 514B-105, and subject  
4 to the provisions of the declaration and bylaws, the  
5 association, even if unincorporated, may:

6           (1) Adopt and amend the declaration, bylaws, and rules and  
7 regulations;

8           (2) Adopt and amend budgets for revenues, expenditures,  
9 and reserves and collect assessments for common  
10 expenses from unit owners, subject to section  
11 514B-148;

12           (3) Hire and discharge managing agents and other  
13 independent contractors, agents, and employees;

14           (4) Institute, defend, or intervene in litigation or  
15 administrative proceedings in its own name on behalf  
16 of itself or two or more unit owners on matters  
17 affecting the condominium. For the purposes of



- 1 actions under chapter 480, associations shall be  
2 deemed to be "consumers";
- 3 (5) Make contracts and incur liabilities;
- 4 (6) Regulate the use, maintenance, repair, replacement,  
5 and modification of common elements;
- 6 (7) Cause additional improvements to be made as a part of  
7 the common elements;
- 8 (8) Acquire, hold, encumber, and convey in its own name  
9 any right, title, or interest to real or personal  
10 property; provided that:
- 11 (A) Designation of additional areas to be common  
12 elements or subject to common expenses after the  
13 initial filing of the declaration or bylaws shall  
14 require the approval of at least sixty-seven per  
15 cent of the unit owners;
- 16 (B) If the developer discloses to the initial buyer  
17 in writing that additional areas will be  
18 designated as common elements whether pursuant to  
19 an incremental or phased project or otherwise,  
20 the requirements of this paragraph shall not  
21 apply as to those additional areas; and



1 (C) The requirements of this paragraph shall not  
2 apply to the purchase of a unit for a resident  
3 manager, which may be purchased with the approval  
4 of the board;

5 (9) Subject to section 514B-38, grant easements, leases,  
6 licenses, and concessions through or over the common  
7 elements and permit encroachments on the common  
8 elements;

9 (10) Impose and receive any payments, fees, or charges for  
10 the use, rental, or operation of the common elements,  
11 other than limited common elements described in  
12 section 514B-35(2) and (4), and for services provided  
13 to unit owners;

14 (11) Impose charges and penalties, including late fees and  
15 interest, for late payment of assessments and levy  
16 reasonable fines for violations of the declaration,  
17 bylaws, rules, and regulations of the association,  
18 either in accordance with the bylaws or, if the bylaws  
19 are silent, pursuant to a resolution adopted by the  
20 board and approved by fifty per cent of all unit  
21 owners at an annual meeting of the association or by  
22 written consent of fifty per cent of all unit owners,



1 that establishes a fining procedure that states the  
 2 basis for the fine and allows an appeal to the board  
 3 of the fine with notice and an opportunity to be heard  
 4 ~~[and providing that if the fine is paid,]~~ within a  
 5 reasonable time, but no later than ninety days after  
 6 the issuance of the fine. Prior to paying the fine,  
 7 the unit owner shall have the right to initiate a  
 8 dispute resolution process as provided by sections  
 9 514B-161[7] and 514B-162[, ~~or by filing a request for~~  
 10 ~~an administrative hearing under a pilot program~~  
 11 ~~administered by the department of commerce and~~  
 12 ~~consumer affairs];~~

13 (12) Impose reasonable charges for the preparation and  
 14 recordation of amendments to the declaration,  
 15 documents requested for resale of units, or statements  
 16 of unpaid assessments;

17 (13) Provide for cumulative voting through a provision in  
 18 the bylaws;

19 (14) Provide for the indemnification of its officers,  
 20 board, committee members, and agents, and maintain  
 21 directors' and officers' liability insurance;



- 1       (15) Assign its right to future income, including the right  
2           to receive common expense assessments, but only to the  
3           extent section 514B-105(e) expressly so provides;
- 4       (16) Exercise any other powers conferred by the declaration  
5           or bylaws;
- 6       (17) Exercise all other powers that may be exercised in  
7           this State by legal entities of the same type as the  
8           association, except to the extent inconsistent with  
9           this chapter;
- 10      (18) Exercise any other powers necessary and proper for the  
11          governance and operation of the association; and
- 12      (19) By regulation, subject to sections 514B-146, 514B-161,  
13          and 514B-162, require that disputes between the board  
14          and unit owners or between two or more unit owners  
15          regarding the condominium be submitted to nonbinding  
16          alternative dispute resolution in the manner described  
17          in the regulation as a prerequisite to commencement of  
18          a judicial proceeding."

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

21           "(a) Except as provided in the declaration, the bylaws,  
22 subsection (b), or other provisions of this chapter, the board



1 [may] shall act in all instances on behalf of the association.  
 2 In the performance of their duties, officers and members of the  
 3 board shall owe the association and its members a fiduciary duty  
 4 and exercise the degree of care and loyalty required of an  
 5 officer or director of a corporation organized under chapter  
 6 414D."

7 SECTION 3. Section 514B-125, Hawaii Revised Statutes, is  
 8 amended by amending subsection (a) to read as follows:

9 "(a) All meetings of the board, other than executive  
 10 sessions, shall be open to all members of the association, and  
 11 association members who are not on the board may participate in  
 12 any deliberation or discussion, other than executive sessions [~~7~~  
 13 ~~unless a majority of a quorum of the board votes otherwise~~]."

14 SECTION 4. This Act does not affect rights and duties that  
 15 matured, penalties that were incurred, and proceedings that were  
 16 begun before its effective date.

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

19 SECTION 6. This Act shall take effect upon its approval.

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INTRODUCED BY:  BJR

JAN 17 2014



# H.B. NO. 2046

**Report Title:**

Condominiums; Board of Directors; Powers and Duties

**Description:**

Clarifies fiduciary duties of condominium association boards.  
Requires association approval of charges and penalties.

*The summary description of legislation appearing on this page is for informational purposes only and is not legislation or evidence of legislative intent.*

