

-WHAT ARE THE ROLES OF THE REAL ESTATE COMMISSION AND REAL ESTATE BRANCH?

-2017 LEGISLATIVE UPDATES

Most of the new laws enacted related to condominium governance.

Act 71 amended section 514B-154.5 (association documents to be provided), Hawaii Revised Statutes (“HRS”), to make clear that a copy of any contract, written job description, and compensation between an association and any person or entity retained by the association to manage the operation of the property on-site must be made available to unit owners or their authorized agents with the proviso that personal information may be redacted. This Act also amended section 514B-110 (bylaws amendment permitted; mixed use property; representation on board), HRS, regarding removal of a director elected by a class of unit owners and section 514B-123 (association meetings; voting; proxies), HRS, regarding an association’s right to cast votes allocated to a nonresidential unit owned by the association in a mixed-use project. Finally, this Act amended section 514B-107 (board; limitations), HRS, by prohibiting tenants from serving on a board.

Act 73 also amended section 514B-123 (association meetings; voting; proxies), HRS, to clarify that if a standard proxy form authorized by the association is returned with no box or more than one box checked, then the proxy will be counted for quorum purposes only.

Act 81 amended section 514B-106 (board; powers and duties), HRS, clarifying that any violation by a board or its officers or members of the mandatory provisions of section 514B-161 (mediation), HRS, or section 514B-162 (arbitration), HRS, may constitute a violation of the fiduciary duty owed; however, a board member may avoid liability by indicating in writing the member’s disagreement with such board action or rescinding or withdrawing the violating conduct within 45 days of the initial violation. This Act also attempted to balance the right of association members to speak and participate in board deliberations and discussions by amending section 514B-125 (board meetings), HRS, to state that all members shall be permitted to participate in board meetings (other than

executive sessions) subject to any board rules for owner participation about which owners must be notified. In addition, the amended section provides that the board meeting notice must include a list of business items expected to be on the meeting agenda. Finally, this Act amended section 514B-126 (board meetings; minutes), HRS, to require unapproved final drafts of minutes of a board meeting to be available within thirty days after the meeting.

Act 190 added an entirely new section to chapter 514B, HRS. This new section prohibits an association, board, managing agent, resident manager, unit owner, or their agents from retaliating against a unit owner, board member, managing agent, resident manager, or association employee who lawfully tries to address, prevent, or stop a violation of chapter 514B, HRS, or association governing documents, such as complain or report an alleged violation. This new law allows affected persons to bring a civil action in district court alleging retaliation and spells out possible legal outcomes.

Act 170 amended all references in both condominium statutes to “medical marijuana,” “medical use of marijuana,” and like terms to “medical cannabis,” “medical use of cannabis,” and like terms. This law amended all such references in the HRS, as well as the Hawaii Administrative Rules.

Little noticed were changes to sections 414D-149 and 414D-155, HRS, affecting standards for directors and officers of Hawaii nonprofit corporations. Section 514B-106(a), HRS, mandates that association board officers and members exercise the degree of care and loyalty required of an officer or director of a nonprofit corporation. Thus, association directors and members must now discharge their duties in good faith, in a manner that is consistent with the duty of loyalty to the association, with the care an ordinarily prudent person in a like position would exercise under similar circumstances, and in a manner the director reasonably believes to be in the best interests of the association. The duty of loyalty has been added to the requirements.

-IT IS A BIG DEAL

Of special note for condominium developers, attorneys, unit owners, and associations is the passage of Act 181. The purpose of this Act was to end the confusion of having two

condominium chapters in the HRS. While the governance of chapter 514A, HRS, was superseded by chapter 514B, HRS, the development sections were still in effect.

Thus, effective January 1, 2019, chapter 514A (condominium property regimes), HRS, will be repealed. A safe harbor provision for chapter 514A, HRS, projects, however, was included in Act 181. Condominiums created prior to July 1, 2006, that were issued an effective date may be sold on or after January 1, 2019, without revising any of the governing documents provided that the developer's public report is **active** on January 1, 2019, and is **accurate** and not misleading. Basically, chapter 514A projects can become chapter 514B (condominium) projects through this safe harbor provision. If the report is no longer active or any pertinent or material changes, or both, have occurred to the project, the developer must file a supplement to the chapter 514A public report superseding all prior reports effective prior to January 1, 2019. Chapter 514A projects without an effective date and filed notice of intent, however, will have to revise their governing documents and register under chapter 514B to offer for sale or sell condominiums.