

Summary of 2019 Legislation Affecting Condominium Associations

News for Motooka Rosenberg Lau & Oyama Clients

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2019 LEGISLATION AFFECTING CONDOMINIUM ASSOCIATIONS

The 2019 session of the Hawaii State Legislature passed bills this year affecting the operations of condominium associations in the following areas:

1. Further explanation of Act 195 regarding application of payments in excess of the common expenses.
2. Clarification on the Association's authority to conduct non-judicial foreclosures.
3. Requirements regarding retaining documents after an Association meeting and allowing electronic voting.
4. Encourages the trend for energy saving buildings via rebates for electronic vehicle charging stations and providing more solar energy options for condo owners.
5. Authorizes Associations to invest in government money market funds.
6. Miscellaneous Acts of note.

The following briefly discusses the new legislation.

1. Application of payments

In 2018 Act 195 was passed prohibiting associations from applying an owner's payment to any charge other than maintenance fees without the owner's authorization. This created confusion and accounting difficulties so the legislature

passed Act 192 (HB61 HD1 SD1 CD1) to remedy some of the issues. Act 192 allows payments to be applied to other assessed Association charges **after** the common expenses have been paid in full. Once those are paid leftover amounts can be applied to late fees, legal fees, fines and interest in accordance with an application of payment policy adopted by the Board. If an owner specifies a specific application for a payment, the payment can be applied per the owner's instruction.

2. Authority to conduct non-judicial foreclosures

Act 282 (SB551 SD1 HD2 CD1) clarifies Associations' power to conduct non-judicial foreclosures whether or not it is specifically stated in the governing documents. The Act also adds consumer protections such as requiring language on nonjudicial foreclosure notices that informs the owner of the right to request mediation within thirty days. The Association may not proceed with the foreclosure until the deadline has passed and the owner has not requested mediation. If mediation is requested it must be completed within sixty days. The Act also requires wording on the notice of default and intent to foreclose to clarify that the notice only pertains to amounts owed to the Association and urges the owner to consult with other creditors regarding the effect of the Association's

foreclosure on other debts. It prohibits nonjudicial foreclosures when the lien arises solely from fines, penalties, legal fees or late fees. Nonjudicial foreclosure cannot be used when the owner is deployed outside of the state of Hawaii.

3. Document Retention and electronic voting

- Act 007 (SB725 SD1) allows Associations to destroy proxies, tally sheets, ballots, owners' check-in lists, and the certificate of election ninety days after an Association meeting unless an election is contested. If contested, the documents must be kept until the election is resolved.

- Act 014 (SB1288 SD1) authorizes use of an electronic voting device at all Association meetings regardless of whether a secret ballot is required. Requires certain safeguards and requires the Board to develop procedures for the use of electronic voting devices to provide ballot secrecy and integrity.

4. Encouraging energy conservation

- Act 142 (HB 1585 HD1 SD2 CD1) Creates a program to offer rebates for installing or upgrading electric vehicle charging systems ("EVCs"). There is a cap of \$500,000 in rebates available each fiscal year. The rebate program will apply to EVCs that are installed or upgraded after December 31, 2019.

- Act 243 (SB272 HD2 CD1) Adds definitions to differentiate between skylights and windows that create electricity via solar power and those that do not. It also adds a provision to allow condo owners to install solar energy devices with The Board's written consent.

5. Investing Association funds

- Act 027 (SB1325) authorizes Associations to invest in government money market funds which are defined as any money market fund that invests at least 99.5% of its total assets in cash, the obligations of the U.S. government, the State of Hawaii, or their agencies, or repurchase agreements backed up by cash or government securities.

Miscellaneous Acts

- Act 223 (SB552 SD1 HD2 CD1) Extends the time for developers whose condominium property regimes were issued an effective date under 514A to update their public reports without having to revise all of the related documents. It allows the developers more time to get the project on the market.

- Act 283 (SB767 SD1 HD1 CD1) Increases the "handyman exemption" to \$1,500 and excludes everything except labor and materials in calculating the cost. This is the first time the amount has been increased since 1992.

- Act 245 (SB245 HD1 CD1) Allows owners of commercial property to make a complaint for criminal trespass using a copy of the prior written warning rather than producing the original. Criminal trespass can only be charged if a person remains on the property or enters again after a reasonable written warning.

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NOTE: The current version of Chapter 514B, Hawaii Revised Statutes (the Condominium Property Act, as recodified) with the 2019 amendments incorporated is available on our website.