

Board of Directors' Guide

Proxies

June 1994

CAVEAT

"The condominium statute is based on self-governance, owner enforcement, mandatory arbitration, and majority rule. There is only minimal governmental involvement in the enforcement of Chapter 514A, Hawaii Revised Statutes, as detailed in Sections 514A-46,-47, and -48. This limited authority has been delegated to the Regulated Industries Complaints Office. As a result, the Real Estate Commission or its staff do not receive or investigate complaints."

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I. Role in Association

Condominium owners elect directors to manage and govern the affairs of the association on their behalf. In Hawaii, a good number of owners elect board members and vote on association issues by proxy.¹ "A proxy is the written authorization by an owner(s) that appoints another person to represent and vote on behalf of such owner(s)."² Not all states allow voting by proxy. The Hawaii condominium law³ does.

A person holding enough proxies may be in a position to control the outcome of the election of board members, and the outcome of those issues requiring a certain percentage of owners' votes. Occasionally, therefore, a board member, an owner, or a group of owners desiring to position themselves in control will embark on a campaign to persuade owners to appoint or designate them as proxy holders. The campaign is commonly referred to as a "proxy solicitation."

In large associations, the costs associated with a proxy solicitation (mailing and printing of proxies and statements of qualifications) can become significant, e.g., a few hundred to several thousand dollars. Thus, subject to certain conditions, the legislature has provided board members and owners with an equal opportunity to use association funds for meeting these costs. Specifically, Section 514A-82(b)(4), of the Hawaii condominium law provides for these procedures.

For the reasons discussed, it is important that condominium owners and board members understand the proxy law. Having an understanding of the law helps owners intelligently and effectively participate in the governance of the association, and helps board members govern the association in accordance with the wishes of the majority of the owners. Appropriately used, proxy voting facilitates the establishment of a quorum and decisions reflecting the will of the majority of owners. If care is not taken, a proxy allows the will of a

minority to make decisions binding on all owners. This guide attempts to provide the reader with:

- ▶ suggestions for the valid and intelligent exercise of proxies;
- ▶ suggestions for documenting compliance with the proxy requirements; and
- ▶ information about the relevant provisions of the Hawaii condominium law.

It should be noted that ...although Hawaii law expressly allows the use of proxies, *Robert's Rules of Order* does not favor voting by proxy.⁴ *Robert's Rules* considers proxy voting:

*"incompatible with the essential characteristics of a deliberative assembly in which membership is individual, personal, and nontransferable."*⁵

Nevertheless, *Robert's* does provide for voting by proxy:

*"Proxy voting is not permitted in ordinary deliberative assemblies unless the laws of the state in which the society is incorporated require it, or the charter or bylaws of the organization provide for it."*⁶



In Hawaii, membership in a condominium association is based on ownership and membership is transferable from one owner to the next.

The information provided in this Guide is not legal advice or a substitute for legal advice. When considering using the forms or applying the information in this guide to a specific situation, readers are advised to seek the services of qualified, competent, licensed professionals (e.g., attorneys, parliamentarians). Professionals should not substitute the information and forms provided herein for his or her independent research and advice.

II. Nature and Implications of Voting By Proxy

Voting by proxy is commonly used in corporate elections, where a corporate shareholder appoints someone to act as their agent in voting their shares of stock. When applied to condominium associations, the apartment owner's granting of a proxy may be said to create an agency, whereby, a person or the board votes an owner's percentage of an undivided interest in the management and governance of the common elements.

A. General and Directed Proxies.

Condominium boards usually receive or solicit two common types of proxies, "general" and "directed." A general proxy authorizes the holder, at an annual or special meeting, to vote on all items on the agenda and on any other business matters coming before the board. See Appendix 8. In contrast, a directed proxy directs and authorizes the proxy holder to vote in a certain manner and in accordance with the express terms of the proxy. See Appendix 10. The giving of a general proxy requires an owner to have trust in the holder's decision making abilities. Thus, a condominium apartment owner giving a general proxy should take steps to ensure that the proxy holder's positions on the various agenda items are consistent with the owner's intentions and desires.



Proponents of directed proxies suggest that proxy forms include language instructing owners to either choose to direct their proxies or give a general proxy. Proponents feel that the opportunity to direct the proxy mitigates against the concentration of power in a few people made possible by the "general" proxies. To accomplish this, proponents suggest that all known issues and board candidates be listed on the proxy form. Owners may then indicate his or her choice of candidates and the owner's decisions about any is-

ues by checking the appropriate box. See Appendix 10.

B. Proxies coupled with a financial interest.

A "proxy coupled with a financial interest" is a special type of general or directed proxy. Proxies normally are valid only for the meeting to which the proxies pertain, and normally can be revoked at anytime by the proxy giver. However, when a proxy is coupled with a "financial interest,"⁷ the proxy is irrevocable until the financial interest terminates.

For example, condominium apartment purchases are usually financed by a lender. The lender will frequently require the condominium owner to grant the lender a proxy to vote for the apartment owner. In that manner, the lender is assured that it will be able to vote for the owner on any matter that may be of particular significance to the lender. The rights of holders of proxies coupled with a financial interest are not affected by the proxy requirements of section 514A-83.2 (e) of the Hawaii condominium law.

III. Proxy Requirements

A. Minimum Requirements of the Hawaii Condominium Law

The minimum requirements governing proxy use appear in various sections of Part V of the Hawaii condominium law. Many of the requirements are set forth in Section 514A-83.2 of the Hawaii condominium law. This section describes the conditions for giving a valid proxy; the duration of a proxy; the permitted scope of the proxy; who may be proxy holders; when the board of directors may be the proxy holder and the procedure an owner may use to indicate how the proxy vote should be used by board members; prohibitions against the use of association funds for soliciting proxies by a board of director's officer (ex-

cept an officer may use association's funds to solicit proxies as an owner⁸); and the revocation of proxies.

Requirements for validity

To be valid, a proxy:

- ▶ must be delivered either to the secretary of the association or the managing agent no later than 4:30 p.m. on the second business day prior to the date of the meeting to which it pertains;⁹ and
- ▶ must contain at least the:
 - name of the association of apartment owners,
 - date of the meeting of the association of apartment owners;
 - printed name and signature of the person or persons giving the proxy;
 - the apartment or apartments for which the proxy is given;
 - the printed name of the person or entity to whom the proxy is given; and
 - the date that the proxy is given. (see Appendix A for sample proxies).

Requirements relating to scope and duration of a valid proxy.

Although, the format and content of most proxy forms have been decided, prepared and printed by the associations' boards, the apartment owner always has the right to broaden or narrow the scope of the proxy or adopt a different form which meets the requirements of the law. For example, if the owner receives a general proxy form, the owner may write on the form itself limiting and directing the proxy holder to vote in a specified manner on certain agenda items or for specific board candidates. See Appendix 8a. Pursuant to section 514A-83.2 (b) of the Hawaii condominium law, a proxy is valid only for the meeting for which it pertains and its adjournments or continuances.

Requirements relating to who may be the proxy holder.

The Hawaii condominium law does not limit the giving of a proxy to condominium owners. Subject to certain conditions, the law allows giving a proxy to any person. Owners may designate as proxy holders, subject to certain **restrictions and limitations**, other condominium owners, resident managers, managing agents, board members, board of directors, officers of the board, any other individual or entity as proxy holders. At minimum, the designation must comply with the requirements and procedures set forth in sections 514A- 82(b)(4) and 514A - 83.2 of the Hawaii condominium law. See Appendix B. What follows is a discussion of selected sections of the Hawaii condominium law, setting forth various proxy requirements depending on who is designated as the proxy holder, for what purposes, and whether association funds are used for proxy solicitations.

1. *The Board of Directors as the Proxy Holder — General Requirements.* When an owner designates the proxy holder as the board of directors as a whole, at minimum, the owner must follow the general procedures set forth in section 514A-83.2 (c) of the Hawaii condominium law. This section requires the owner to:

- ▶ mark or check the box required to be on the proxy form, indicating that the owner wishes the vote to be shared with each board member receiving an equal percentage. If the owner does not mark the box, then the owner's vote will be voted on the basis of the preference of the majority of the board.

Apparently, the box procedure forces an owner to perform an overt act when the owner wishes to disagree with the majority preference of the board. Inaction allows the continuation of the status quo of majority preference, thereby, continuing the presumed support for the majority of the elected board.



This box procedure applies to all proxy forms where the board is designated the proxy holder. This procedure applies irrespective of the purpose for which the proxy is given, e.g. election of board members, borrowing of money (where bylaws require owner approval), upgrading the lobby etc.

2. *Other Proxy Holders and the Election of Board of Directors.*

a) *Board members.*

When a board member solicits proxies with association funds and the proxies are for the election or reelection of board directors, the requirements set forth in sections 514A-82(b) (4), of the Hawaii condominium law must be followed. This section prohibits a board member using association funds from casting the proxy votes for the election or reelection of board members unless: ¹⁰

- ◆ the proxy form specifically authorizes the board member to vote for the election or reelection of the board directors; and
- ◆ the board first posts notice of its intent to solicit proxies in prominent locations within the project at least 30 days prior to the proxy solicitation.



The apparent fairness and equal opportunity purpose of posting of notice of the board's intention to solicit proxies is best understood by considering the situation where a group of owners is challenging an incumbent board member's reelection. A campaign for the required number of votes to control the outcome of election can be expensive and often cannot be borne easily by an owner. Thus, the Hawaii condominium law provides owners with an equal opportunity to access and use association funds for

soliciting proxies. The law provides that within seven days of posting a notice, if the board receives a request by any owner for use of association funds to solicit proxies accompanied by a statement, the board must either:

- ◆ mail to all owners a proxy form containing the names of all owners who have requested the use of association funds for soliciting proxies accompanied by statements submitted by the owners, **not to exceed 100 words**, indicating the owners' qualifications to serve on the board and reasons for wanting to receive proxies; or
- ◆ mail to all owners a proxy form, containing no names, but accompanied by a list of names of all owners who have requested the use of association funds for soliciting proxies and their statements.¹¹

b) *Resident managers and managing agents.*

The resident manager's, managing agent's, and board member's proxy use are limited by and subject to the specific conditions of Section 514A-82 (b) (4), of the Hawaii condominium law. Among other provisions, this section specifically prohibits resident managers and managing agents from soliciting any proxies for their use from condominium owners in associations which employ or hire them. Should the managers or managing agents receive any proxies, they may not vote the proxies for any purpose except to establish a quorum. Thus, for example, a manager or managing agent cannot cast a proxy vote for the election or reelection of board members.

c) *Officers of the board.*

Officers of the board can be proxy holders. However, officers cannot use association funds to solicit the proxies including proxies for the election or reelection of board members. However, the Hawaii condo-

minium law¹² does not prevent a board's officer from using association funds to solicit proxies as an owner.

d) Owners as Proxy Holders.

When the board intends to solicit proxies for the election of board directors, Section 514A-82 (b) (4) of the Hawaii condominium law must be followed. The section requires the board to post notice in prominent locations throughout the project that the board intends to solicit proxies for the election or reelection of board directors. Within seven days of posting the notice, an owner may make a request for the use of association funds to solicit proxies. The board must then either:

- ◆ mail to all owners a proxy form containing the names of all owners who have requested the use of association funds for soliciting proxies accompanied by statements submitted by the owners, not to exceed 100 words, indicating the owners' qualifications to serve on the board and reasons for wanting to receive proxies; or
- ◆ mail to all owners a proxy form, containing no names but, accompanied by a list of names of all owners who have requested the use of association funds for soliciting proxies and their statements.¹³

3. Successor Proxy Holders.

Sometimes, for whatever reason a designated proxy holder is unable to attend the meeting for which the holder is given a proxy. The Hawaii condominium law appears to make no specific provisions for these situations. Nevertheless, associations may consider adopting a bylaw providing for such a procedure. The procedures could include: giving the board authority to declare the proxy invalid, designating the use for quorum purposes only, or having the proxy automatically vest in the board of directors as the successor proxy holder with the proxy voted with the preference of the majority. Thus, associations may also consider

providing a space on the proxy form for designating successor proxy holders. See Appendix 11. Whatever procedure is finally adopted by the board, the associations should make sure that the owners are educated about the procedure.

IV. Documenting compliance with and suggestions for implementing the minimum requirements.

Some of the proxy problems encountered by boards and owners include, but are not limited to: forgeries, alterations, non receipt of a standard proxy form (where one has been approved by the association), improperly signed proxy form, improperly completed proxy form, and unfair control over the collection and counting of the proxies. This part provides some suggestions for creating a paper trail for documenting compliance with the proxy requirements. Documentation will help minimize the likelihood of a challenge to the votes cast by proxies. This section also discusses some of these proxy problems and some suggestions for addressing them.

Suggestion #1: Boards should make sure that the meeting notice is properly sent and document that fact. Documentation could include a notarized or certified statement (see sample affidavit and certification in Appendix 3a) describing when, how, where, to whom, and the date the notice was given, sworn to or certified by whomever caused the notice to be given. A copy of the notice could be attached to the notarized or certified statement. These documents should be kept and filed by the secretary in the association's files.

Notice of association meetings (annual or special) must be sent to each member of the association at least fourteen days prior to the meeting. The notice must at a minimum contain: the date, time and place of the meeting, the agenda items and a standard proxy form (if any) authorized by the association.¹⁴ See Appendix 3, 3a, for a sample notice and documentation of giving the appropriate notice.

Suggestion #2: *Boards should consider adopting procedures to verify that proxies were executed by the record title owner.* Verification procedures may include but are not limited to comparing the name of the proxy giver with: the association's current membership list, owner's signature card, other previously signed documents; or the execution of a "voting certificate" etc. Section 514A-83.3 of the Hawaii condominium law requires the resident manager, managing agent, or board of directors to keep an accurate and current list of members' names and addresses and names and addresses of vendees (purchasers) under an agreement of sale. The list must be maintained at a place designated by the board of directors and a copy must be made available, at cost, to any member of the association as provided in the Hawaii condominium law and governing documents.¹⁵

In some cases, the proxies may be given by persons who stand in the place of the record title owner and derive their authority to sign for the owner pursuant to a:

- ◆ power of attorney;
- ◆ trust agreement;
- ◆ appointment as personal representative of the deceased; or appointment as guardian for a minor owner.

In these situations, the board should verify the authority of the person signing for the owner. This may be done by requesting the person to submit to the board the legal document authorizing the person to sign for the owner. The document should then be reviewed by an attorney as to the status of the person claiming to act on behalf of the owner. Examples of such documentation include the originals of an executed power of attorney, trust agreement, letters of appointment, and letters of guardianship.

In other cases, where the condominium is owned by multiple owners, a corporation, or a partnership, an executed "voting certificate" provides the board information about who among the owners, officers, or partners, is authorized to cast votes and execute proxies.¹⁶ Moreover, in a

corporate ownership situation, a resolution designating which officer is authorized to sign a proxy together with the officer's sample signature may be employed to verify the proxy.

Hawaii law is silent on requiring owners to provide the association with an owner's signature card, much like the bank requires when opening a checking account. However, by adopting procedures like a signature card, the possibility of forged proxies will be minimized.

Agreement of Sale Situations. Section 514A-83 of the Hawaii condominium law gives buyers who purchased a condominium apartment pursuant to an agreement of sale¹⁷ the right to vote in place of the seller. However, the seller may retain the right to vote on matters substantially affecting the seller's security interest in the apartment. Some of the retained matters are set forth in Section 514A-83 of the Hawaii condominium law. In the agreement of sale situation then, it is a good practice to have the seller of the apartment indicate on a voting certificate, the name of the buyer, and attach a sample of the buyer's signature. The buyer under an agreement of sale may, in some cases, give a proxy to a third party. For these reasons, it is also a good practice to verify the buyer's signature. Verification may include comparing the buyer's signature with checks or other documents previously signed by the buyer.

Suggestion #3: *Send a cover letter with the proxy form with instructions on how to complete the proxy form.* Often times, proxies are declared invalid because the proxies have not been completed correctly or some information is missing. An instructional cover letter may minimize these occurrences. (See Appendix 1.) However, when the validity of a proxy is questioned and the validity cannot be easily resolved, competent professional advice should be sought (e.g., the services of an attorney versed in this area of the law). Although not required by law, the better practice appears to require that proxies be attached to the ballot.

Suggestion #4: *Standard proxy forms can easily become invalid because of changes in the law. Boards should adopt procedures to ensure that any authorized standard proxy form is regularly updated to reflect the requirements of new laws. Dissident apartment owners who solicit proxies may consider using the same proxy form used by the association. This may minimize a challenge by the board that the proxy form used by the dissidents is invalid.*¹⁸



Proxies meeting the requirements of the law cannot be invalidated simply because it is not the same as the association's standard form.

Suggestion #5: *Associations should consider adopting procedures to safeguard the collection, and validation of proxies. A sample procedure may consist of: (a) sending condominium apartment owners two envelopes with the proxy forms authorized by the association, one smaller than the other; (b) pre-marking the larger envelope with an identifying marker; (c) instructing the owners to return the proxy by sealing the proxy in the small envelope and placing the small envelope in the larger envelope; (d) requiring the proxy giver to sign over the seal of the larger envelope;¹⁹ (e) checking to see that the number on the larger envelope is one issued by the association; (f) opening the larger envelope by a neutral joint election committee composed of one or more representatives from the board and one or more representatives from the condominium owners; (g) requiring owner's signature on the proxy be attested to by one witness.*

Suggestion #6: *Board members, managing agents, and employees of the association should adhere to the spirit and intent of the proxy solicitation legislation.*

The first condominium specialist, in his report to the legislature, stated the intent of the proxy procedure requirement of section 514-82 (b) (4) of the Hawaii's condominium law as follows:

"The apparent intent of this whole procedure is to place board members and owners on an equal footing in soliciting proxies with association funds."²⁰

The Hawaii condominium law prohibits managing agents and resident managers from soliciting proxies for their own use in condominiums where they are employed. Although, they may use any proxies received for purposes of establishing quorum only. Nevertheless, the first condominium specialist reported to the legislature incidents where the resident managers, or managing agents did not directly solicit proxies for their own use. Instead they had their spouses, close friends and relatives solicit proxies for their use. These reported incidents, while perhaps not specifically banned by the Hawaii condominium law, circumvented the statute's "equal opportunity" intent. Thus, managing agents, resident managers and employees who attempt to circumvent the required solicitation procedures leave elections and association decisions open to challenge. In addition, a board member who uses association funds for soliciting proxies for the election or reelection of the board without following the procedures set forth in 514A-82 (b) (4) may be breaching the board member's fiduciary duty.

Suggestion #7: *Associations should consider amending or drafting bylaws to establish a process for the distribution, collection, and counting of the proxy votes, which is not dependent on the integrity of just one individual handling the proxies. Such a process may include placing the distribution, collection, and counting of proxies in the joint control of representatives from the board and any dissident faction (a neutral process). Unilateral board controls over the collection and counting of proxy votes have resulted in reported abuses such as:*

- ◆ the improper invalidation of proxy votes;
- ◆ the failure to count proxy votes given to the dissidents; and
- ◆ the calling and encouraging of owners to change their votes.

Suggestion #8: *Associations should consider amending the association's bylaws by restating and incorporating the proxy requirements of section 514A-82(b) into the bylaws and record the amendment. Section 514-82(b) of the Hawaii condominium law has been amended in various respects over the years, and the project's bylaws may not contain all the current requirements imposed by law.*

V. Sample Proxies

A proxy form may include a number of provisions. However, at a minimum the proxy form should contain:

- ◆ the name of the association of apartment owners;
- ◆ the date of the association's meeting;
- ◆ the printed name and signature of the person or persons giving the proxy;
- ◆ the apartment or apartments for which the proxy is given,
- ◆ the printed name of the person or entity to whom the proxy is given;
- ◆ the date that the proxy is given;
- ◆ a specific authorization to a board member to vote for the election or reelection of board directors when a board member uses association funds to solicit proxies ²¹;
- ◆ a box where the owner can indicate that the owner wishes his or her vote to be allocated to each board member equally;



Proxies that do not indicate an equal allocation of the owner's vote to each board member will be voted on the basis of the preference of the majority of the board.

- ◆ a box that the owner can mark to obtain either a summary of the association's annual audit report, or an unabridged copy of the annual audit report. (If the box is not marked, the board is not required to submit a summary or unabridged copy of the annual

audit report to the owner. See section 514A-96 (b), of the Hawaii condominium law).

VI. Comments about Appendix A

Appendix A contains sample proxy forms and instructions for completing the proxy. The sample forms are generic in nature and are provided only for purposes of illustration. The forms are not a substitute for legal advice or for other professional advice. Thus, prior to the use of any forms, the reader is advised to seek professional advice (e.g., the services of an attorney familiar with condominium governance matters, a parliamentarian etc.).

Endnotes

- | Page in text | Note# | |
|--------------|-------|--|
| p. 1 | 1. | Hawaii Real Estate Commission, <i>Report to the Legislature relating to Condominium Property Regime</i> , Hawaii 1990, pg. 43. |
| p. 1 | 2. | Nagle, P. Michael, <i>CAI-GAP Report 21 Guide to Annual Meetings, Special Meetings, and Elections</i> . Alexandria, Virginia: Community Associations Institute, 1992, pg. 13. This publication is part of the Condominium Reference Library, and is one among the many reference publications available for use at your local Hawaii State Public Library. Please call your library branch to confirm availability. |
| p. 1 | 3. | Chapter 514A, <i>Hawaii Revised Statutes</i> . |
| p. 1 | 4. | "All association and board of directors meetings shall be conducted in accordance with the most current edition of Robert's Rules of Order." Section 514A-82(a)(16) <i>Hawaii Revised Statutes</i> . Robert's Rules of Orders is an authoritative collection of recognized procedures for the fair and orderly conduct of meetings. The rules are about 114 years old plus. Its origins can be traced as far back to the fifth century to the ways of life of the Anglo-Saxon tribes before their migration to Britain. Robert, Henry M. III, <i>Robert's Rules of Order Newly Revised</i> , 9th Edition, Scott, Foresman and Company, 1990, pg. xxv-xxvi. |
| p. 1 | 5. | <i>Ibid.</i> , pg. 421. |
| p. 1 | 6. | <i>Ibid.</i> , pg. 421. |
| p. 2 | 7. | Section 514A-83.2 (b), (c), <i>Hawaii Revised Statutes</i> . |
| p. 3 | 8. | Section 514A-83.2 (d), <i>Hawaii Revised Statutes</i> . |
| p. 3 | 9. | Practical Issue: Counting of days. Throughout Part V, "Condominium Management," Chapter 514A, <i>Hawaii Revised Statutes</i> , references are made to required number of days for performing an act. Thus within the usual context, "delivery of the proxy no later than 4:30 p.m. of the second business day prior to the date of the meeting" means that the secretary or managing agent will have less than 48 hours if the meeting is held in the morning or afternoon and more than 48 hours if held in the evening. |
| p. 4 | 10. | Section 514A-82 (b) (4), <i>Hawaii Revised Statutes</i> . |
| p. 4 | 11. | Section 514A-82 (b) (4), <i>Hawaii Revised Statutes</i> . |
| p. 5 | 12. | Section 514A-83.2 (d) <i>Hawaii Revised Statutes</i> . |
| p. 5 | 13. | Section 514A-82 (b) (4), <i>Hawaii Revised Statutes</i> . |
| p. 5 | 14. | Section 514A-82(b)(3), <i>Hawaii Revised Statutes</i> . |
| p. 6 | 15. | Condominium declarations, bylaws, and administrative rules. Section 514A- 83.3, <i>Hawaii Revised Statutes</i> . |
| p. 6 | 16. | Nagle, P. Michael, pg. 20. |
| p. 6 | 17. | An agreement of sale is a written contract where a buyer promises to purchase and the seller promises to sell the apartment at some future point in time at an agreed upon price. Similar arrangements in other states are called: land sale contract, contract for deed. |
| p. 7 | 18. | Hawaii Real Estate Commission, 1990, pg. 63. |
| p. 7 | 19. | Some associations even require the proxy form to be notarized. These added procedures are not required by law but may minimize the possibility of forged proxies. |
| p. 7 | 20. | Hawaii Real Estate Commission, 1990, pgs. 46-48. |
| p. 8 | 21. | At least thirty days prior to soliciting proxies, the board must first post notice in prominent locations that it will be using association moneys to solicit the proxies. Section 514A-82 (b) (4), <i>Hawaii Revised Statutes</i> . |



DISCLAIMER

DISCLAIMER: The sample forms are provided herein for educational purposes and illustrations only. No opinion is expressed as to the legality of the forms. The samples are not legal advice. The reader is advised to make an independent decision about whether the sample forms comply with the applicable requirements of the laws of Hawaii. The reader is advised to consult with an attorney or other competent professional prior to use of any sample forms. The authors, editors, and publisher specifically disclaim any liability, loss, or risk incurred as a direct or indirect result of the use and application of any sample forms. All procedures and forms are suggestions only, and changes must be made depending on the specific circumstances of each case.

Appendix 1

SAMPLE LETTER¹ TO UNIT OWNERS WHERE PROXIES MAY BE USED TO VOTE FOR THE ASSOCIATION'S DIRECTORS

[Condominium Association Letterhead]

Date:

RE: Annual Meeting

Dear Association Member:

On ... [date of meeting], at ... [time, including a.m. or p.m.] at ... [complete address of location of meeting], the Annual Meeting of ... [name of the condominium association] will be held for the purpose of electing directors, [list additional specific matters to be brought before the meeting].

The following documents are enclosed:

Notice of Annual Meeting (See Appendix 3 or 5)
Agenda For Annual Meeting (See Appendix 5 and 6)
A Proxy Form (See samples, Appendices 7-11)
Voting Certificate² (See Appendix 4)
[Copies of any Resolutions to be voted on at the meeting.]

For the meeting to be held, there must be a quorum of the members present in person or by proxy; therefore, we ask you to please try to attend. If you are unable to appear in person, your proxy can appear in your place, be counted in the determination of a quorum, and voted on your behalf. If you decide later to appear at the meeting, you may revoke your proxy at the meeting and cast your ballot yourself.

You may designate any person on the proxy to represent you. However, if you give the proxy to the current board of directors then you must indicate on the proxy form: (1) whether you desire each member of the board to share an equal percentage in the vote; or (2) whether you desire that your proxy be counted with the preference of the majority of the board. By marking the box on the proxy form you will have indicated that you wish each board member to share an equal percentage in the vote. An unmarked box indicates that you wish that your proxy be counted with the preference of the majority of the board. When selecting a proxy holder, you must insert the proxy holder's name on the Proxy form.

Please complete the enclosed **proxy** form and the "Voting Certificate." Deliver the completed form to the Secretary of the Association, or the managing agent (if any), in advance of the meeting, no later than **4:30**

¹ Rohan, Patrick J., Melvin A. Reskin, *Condominium Law and Practice Forms*, Vol 1A Section 43.03[5], Mathew Bender & Co.: New York, N.Y. (1993). Sample has been edited in some parts to incorporate the requirements of the Hawaii condominium law.

² It is a good practice that the Association has on file signed documentation as to who is authorized to vote from each condominium apartment. A completed "Voting Certificate" provides this important information.

on _____. (Place deadline date here. The deadline date is the second business day prior to the date of the meeting).

ANY PROXY GIVEN IS ONLY VALID FOR THIS MEETING AND ANY ADJOURNMENTS OF THIS MEETING. YOUR PROXY IS IMPORTANT AND TO HAVE YOUR PROXY COUNT PLEASE DO THE FOLLOWING:

1. Check whether the name of your condominium association appears on the top of the Proxy form. If the name does not appear on the top of the form write or type the name of your condominium association on the form;
2. Check whether the date and time of the meeting appear in the proxy form. If the date and time does not appear write or type the date and time in;
3. Deliver in person or by depositing in the mail the completed signed Proxy to the Secretary of the association of apartment owners or the managing agent, if any, no later than **4:30 on _____ (Place deadline date here. The deadline date is the second business day prior to the date of the meeting).**
4. Print your name in the place provided as it appears on the record title of ownership, e.g., as it appears on your deed or apartment lease. Sign your name in the place provided. Your signature and printed name must match;
5. Indicate your condominium apartment number in the place provided;
6. Print the name of the person or entity to whom you are giving the proxy to;
7. Write in the date the proxy is given;
8. Indicate in the box provided on the Proxy form whether you wish to restrict your proxy to only certain matters;
9. If you are giving your proxy to the Board of Directors, check the box if you wish the proxy vote be shared with each board member receiving an equal percentage. **If the box is not checked your proxy vote shall be counted with the preference or choice of the majority of the board;**
10. To direct that your proxy holder cast the proxy *according to your directions* check the boxes next to your choice of candidates and issues. You may also change the proxy from a general to a directed proxy by noting on the form your choice of candidates and issues (See Appendix 10);
11. If you are signing a proxy for the owner as an executor, administrator, trustee, guardian, conservator, corporate officer, or partner, please include a copy of your appointment or other document verifying your authority to act in such capacity;
12. Please check the appropriate box if you wish to obtain either a summary of the annual audit report, or an unabridged copy of the annual audit report. If you do not check the box you will not receive a summary or an unabridged copy of the annual audit report. **If the annual audit will not be completed by at least thirty days prior to the date of the annual meeting, the board will make**

available an unaudited year end financial statement. The annual audit will then be available at the annual meeting or as soon as the audit is completed; and

13. Return the completed proxy to the secretary of the association of apartment owners or the managing agent, if any, no later than **4:30 on _____ (Place deadline date here. The deadline date is the second business day prior to the date of the meeting).**

OPTIONAL PROCEDURE: 13. Place the completed proxy in the small provided envelope. Seal the small envelope, then place the small envelope containing the completed proxy in the larger provided envelope. Seal the larger envelope and sign your name over the seal. Return this larger envelope to the secretary of the association of apartment owners or the managing agent, if any, no later than **4:30 on _____ (Place deadline date here. The deadline date is the second business day prior to the date of the meeting).**

A representative from the association will open the larger envelope. The smaller envelope with your completed proxy will be deposited in a secure ballot box. A joint election committee of board members and owners will later open and tally the votes in the smaller envelope.

If you wish to discuss any of these procedures, please contact ... [name of President, managing agent, manager*], the President or ... The Secretary [name of Secretary], of your Association.

The Meeting is scheduled for ... [time, including a.m. or p.m.]. Thirty (30) minutes prior to that time, owners and proxy holders may be marked as present on an attendance list and provided with ballots. Please come early so that this process of checking in does not delay the start of the meeting. We look forward to see you at the meeting.

Appendix 2

Notice of Annual Meeting — Section 514A-82 (b) (3), HRS.

The Notice of Association meetings, whether annual or special shall:

1. Be sent to each member of the association of apartment owners at least fourteen days prior to the meeting;
2. State the date, time, and place of the meeting;
3. Include a meeting agenda with specific agenda items; and
4. Include a standard proxy form authorized by the association if any.

Appendix 3

SAMPLE NOTICE OF ANNUAL MEETING OF THE ASSOCIATION OF APARTMENT OWNERS OF

Notice of the Annual Meeting of the Association of Apartment Owners of _____ is being given in accordance with the Condominium Law, and Bylaws. The date, time and place of the annual meeting appear below:

DATE: _____
TIME: _____ (CHECK IN WILL BEGIN AT _____)
PLACE: _____

_____.

For the following purposes:

1. To receive the Association Officers and Directors' Annual Reports.
2. To elect ____ directors (place number of vacant seats up for election or reelection here if any).
3. To transact such business as noted on the attached **Agenda** and any other business as may properly come before the Association.

Important Please Note:

- Only owners of record appearing on the association's current membership list are entitled to vote at the meeting. If you are not sure whether you are on the association's current membership lists, please call the Secretary, _____ (place name here) or the _____ (place name here of managing agent) of the Association of _____ Owners.
- All owners are encouraged to attend the meeting. Your attendance at the meeting is important to establishing a quorum. Without a quorum, no decisions can be made on the above noted items.
- If you cannot physically be present at the meeting, you can designate any person to vote on your behalf by completing and returning the enclosed proxy to the Secretary, _____ (place name here) or the _____ (place name here of managing agent) of the Association of _____ Owners, **no later than 4:30 p.m. on _____**. **(Place deadline date here. The deadline date is the second business day prior to the date of the meeting)**. For your proxy to be valid, State Condominium Law requires the proxy to be completed and return by such time and date.
- Should you change your mind and attend the meeting, your presence at the meeting permits you to void the proxy and vote in person.

-
- If you are giving your proxy to the Board of Directors, check the box if you wish the proxy vote be shared with each board member receiving an equal percentage. **If the box is not checked your proxy vote shall be counted with the preference or choice of the majority of the board.**
 - The enclosed letter contains additional information and instructions about returning a valid proxy. Please read the letter carefully, it is important to having your proxy count.

Meeting called by: _____
President

by: _____

Managing Agent/Resident Manager/Other

Date of Notice: _____

Appendix 3a

SAMPLE OF AFFIDAVIT OF POSTING NOTICE OF ANNUAL MEETING

[Name of Condominium Association]

State of Hawaii) (Optional Notarization)
) SS.
County of _____)

I, ... [name of secretary], being the secretary of [name of the condominium association] keep do hereby state and affirm [certify] as follows:

That I caused to be posted in conspicuous locations on the property of ... [name of condominium association] at ... [location of property for posting meeting notice] on ... [date of posting notice], the Notice of the Annual meeting of the Association to be held at ... [complete address of the location of meeting,] at ... [time, including a.m. or p.m. on... [date of meeting] together with the attached agenda.

That I also caused the Notice of the Annual Meeting, the official association proxy form and meeting agenda of the Association of Apartment Owners of ... [name of association] to be mailed to the apartment owners of record in [name of association office or property manager] on _____ day of _____, 1994.

Name of Secretary/ Managing Agent/ Property Manager

OPTIONAL NOTARIZATION

(Although notarization is optional, this process may be used to establish that the notice etc. were appropriately given.)

Sworn to and subscribed before me this ____
day of _____ 1994.

Notary Public

My Commission expires: _____

Appendix 4

SAMPLE OF VOTING CERTIFICATE

A VOTING CERTIFICATE IS NOT A PROXY. This Voting Certificate is used to designate one person among the many co owners of a condominium apartment, the officers of a corporate owner, the partners in a partnership, as the person authorized to vote or give a proxy, (e.g., husband or wife, one of the joint owners, one of the tenants in common, president, director, partner). To be valid and effective, the Voting Certificate must be on file with the Secretary of the Association. The appointment is effective and revoked only by a subsequent certificate or by cancellation in writing. This form when completed shall be retained in the records of the Association and is valid until superseded or canceled. The person named in the Certificate may vote on behalf of the condominium apartment owner or may execute a Proxy and name another person to represent the condominium apartment owner.

(PRINT or TYPE the name of association of apartment owners here)

VOTING CERTIFICATE FOR

(TYPE or PRINT the name of condominium apartment owner here with apartment number)

THIS IS TO CERTIFY that the undersigned members of [name of the condominium association], ("Association"), constituting all the record title owners of the condominium apartment number ... of [name of the condominium], pursuant to the Declaration of Condominium Property Regime (CPR) thereof, as recorded in [Book and Page Number*] of the State of Hawaii Bureau of Conveyances, have designated and appointed: _____ [Name of person, corporate officer, partner] whose address is:

[Street Address]

as their representative to cast any votes, to designate anyone as proxy, and to express any approvals or disapprovals that the owners may be entitled to cast or express at any meetings of the membership of the Association and for any other purposes, pursuant to the condominium law, and the bylaws of the association.

This certificate is made pursuant to the Hawaii condominium law and the bylaws of the association and does hereby revoke all prior appointments, and shall be valid until revoked by a subsequent writing.

DATED: _____, 19 ____.

OWNER (Name must be same as the record title owner; should be the same as on the deed or apartment lease, agreement of sale, the association's current membership list)

OWNER (Name must be same as the record title owner; should be the same as on the deed or apartment lease, agreement of sale, the association's current membership list)

Appendix 5

Note: May be used when the board of directors intends to use association funds to solicit proxies for the election and reelection of board members. A notice similar in nature must be posted at prominent locations in the condominium at least 30 days prior to the board's solicitation of proxies.

NOTICE OF ANNUAL MEETING OF THE ASSOCIATION OF APARTMENT OWNERS OF

Notice of the Annual Meeting of the Association of Apartment Owners of _____ is being given in accordance with the Condominium Law, and Association Bylaws. The date, time and place of the annual meeting appear below:

DATE: _____
TIME: _____ (CHECK IN WILL BEGIN AT _____)
PLACE: _____

For the following purposes:

1. To receive the Association Officers' and Directors' Annual Reports.
2. To elect ____ directors (place number of vacant seats up for election or reelection here if any).
3. To transact such business as noted on the attached **Agenda (Appendix 6)** and any other business as may properly come before the Association.

Important Please Note:

- **The Board of Directors hereby gives notice that it intends to solicit proxies for the election of members to the board of directors.**
- Condominium owners may request the use of association funds to solicit proxies. This request must be made to the board within 7 days from the posting of this notice. Owners may also request that the board mail to all condominium owners a proxy form and their statement(s), indicating their qualifications to serve as a director and the reasons for soliciting proxies. The submitted statement (s) cannot exceed 100 words.
- If you desire to have your name and a copy of your statement included with the mailing, please submit to the managing agent _____ (place name of managing agent, resident manager), at _____ (place the address here) by _____ 199__.

Meeting called by: _____
President

by: _____

Managing Agent/Resident Manager/Other

Date of Notice: _____

Appendix 6

Sample Agenda

Annual Meeting of the

(place name of association of apartment owners here)

AGENDA

Date: _____

Time: _____

Place: _____

1. Call to Order, Proof of notice of meeting, Quorum and certifying of proxies
2. Reports of officers and directors
 - a. Introductions, Announcements, Correspondence
 - b. Approval of minutes
3. Committee reports
 - a. Reserve Study and Funding
 - b. Architectural
 - c. Audit
 - d. Bylaws
 - c. Recreational
 - d. Finance
4. Appointment of joint election inspectors committee
5. Election of directors
 - a. Nominating committee report
 - b. Nominations from the floor
 - c. Voting
6. Unfinished business
 - a. ADA compliance for association run convenience store
 - b. Adoption of budget
7. New business
 - a. Purchase of condominium apartment number 401 for use by the resident manager
 - b. Restatement of and amendments to bylaws
8. Townhall general discussion by members
9. Announcement of election results
10. Adjournment

Appendix 7

Sample Proxy

Note: May be used by a board soliciting proxies for the election and reelection of board members.

(PRINT or TYPE name of association of apartment owners here)

PROXY

I. Designation of proxy holder

I, the undersigned owner do hereby constitute and appoint **CHECK ONE BOX**

- The board of directors of the above named Association of Apartment

If you have checked this box you must complete the * provision below.

OR

- Any person (If this box is checked, print the name of the proxy holder)

as my proxy to vote for the election and reelection of board directors on my behalf at the Annual Meeting to be held on _____, (place date of meeting here) and at any and all adjournments in connection with this meeting, in accordance with the percentage interest owned in the common elements that the undersigned owner would be entitled to vote if then personally present, hereby revoking any proxy or proxies heretofore given, and ratifying and confirming all that my agent by virtue may do hereof. The undersigned also hereby acknowledges receipt of notice of said meeting.

- * If you have named the board of directors as proxy holders above, check here if you wish the vote to be shared with each Board member receiving an equal share. If you leave this box unmarked then your vote will be cast as decided by the preference of the majority of the board.

II. Annual audit reports

Check one box indicating the type of annual audit report you wish to receive. The Hawaii condominium law requires the board to make a copy of the annual audit available to each condominium owner thirty days prior to the date of the annual meeting. The board is not required to make the report available to a condominium owner if this section is not marked.

- Summary of the annual audit report
- Unabridged copy of the annual audit report.

III. Procedures for a valid proxy

This proxy is valid only for the annual meeting noted in this Proxy and at all adjournments thereof. It may be revoked prior to its exercise. Should you attend the meeting, you may cancel the proxy and you may then vote in person. **TO BE VALID, THIS PROXY MUST:**

- be delivered to the association secretary or managing agent no later than 4:30 p.m. on _____ (Place deadline date here. The deadline date is the second business day prior to the date of the meeting).
- provide the proxy giver's printed name and signature, apartment number, the printed name of the proxy holder, and date the proxy is given.

IV. Names and signatures

The name signed and printed on this proxy must be the same as the name appears on the record title of condominium ownership.

Those persons and entities signing for the owner of the apartment, such as executors, administrators, trustee, guardians, conservators, corporate officers and partners must submit to the Association, prior to the meeting, a copy of their appointment or other documentation verifying their authority to act in such capacity. **All of the blanks including the following blanks must be completed as indicated or the proxy will be void.**

PRINTED NAME OF OWNER:

SIGNATURE OF OWNER:

OWNER'S APARTMENT NO. _____

DATE SIGNED: _____

Appendix 8

Sample Proxy

Note: May be used in giving a general proxy to the board of directors for all association matters.

(PRINT or TYPE name of association of apartment owners here)

PROXY

I. Designation of proxy holder

I, the undersigned owner do hereby constitute and appoint **CHECK ONE BOX**

- The board of directors of the above named Association of Apartment

If you have checked this box you must complete the * provision below.

OR

- Any person (If this box is checked, print the name of the proxy holder)

as my proxy to vote for the election and reelection of board directors on my behalf and to act on my behalf on any and all business that come before the Annual Meeting to be held on _____, (place date of meeting here) and at any and all adjournments in connection with this meeting, in accordance with the percentage interest owned in the common elements that the undersigned owner would be entitled to vote if then personally present, hereby revoking any proxy or proxies heretofore given, and ratifying and confirming all that my agent by virtue may do hereof. The undersigned also hereby acknowledges receipt of notice of said meeting.

- * If you have named the board of directors as proxy holders above, check here if you wish the vote to be shared with each Board member receiving an equal share. If you leave this box unmarked then your vote will be cast as decided by the preference of the majority of the board.

II. Annual audit reports

Check one box indicating the type of annual audit report you wish to receive. The condominium law requires the board to make a copy of the annual audit available to each condominium apartment owner thirty days prior to the date of the annual meeting. The board is not required to make the report available to a condominium owner if this section is not marked.

- Summary of the annual audit report
- Unabridged copy of the annual audit report.

III. Procedures for a valid proxy

This proxy is valid only for the annual meeting noted in this Proxy and at all adjournments thereof. It may be revoked prior to its exercise. Should you attend the meeting, you may cancel the proxy and you may then vote in person. **TO BE VALID, THIS PROXY MUST:**

- **be delivered to the managing agent or the association secretary no later than 4:30 p.m. on _____ (Place deadline date here. The deadline date is the second business day prior to the date of the meeting).**
- **provide the proxy giver's printed name and signature, apartment number, the printed name of the proxy holder, and date the proxy is given.**

IV. Names and signatures

The name signed and printed on this proxy must be as the name appears on the record title of condominium ownership.

Those persons and entities signing for the owner of the apartment, such as executors, administrators, trustee, guardians, conservators, corporate officers and partners must submit to the Association, prior to the meeting, a copy of their appointment or other documentation verifying their authority to act in such capacity. **All of the blanks including the following blanks must be completed as indicated or the proxy will be void.**

PRINTED NAME OF OWNER:

SIGNATURE OF OWNER:

OWNER'S APARTMENT NO. _____

DATE SIGNED: _____

Appendix 8a

Sample Proxy

Note: May be used to change a general proxy to a directed proxy.

(PRINT or TYPE name of association of apartment owners here)

PROXY

Note: Changes should be initialed

I. Designation of proxy holder

I, the undersigned owner do hereby constitute and appoint ^{pd} Person Doe ^{pd} the board of directors of the Association of Apartment ~~(complete the * box below)~~ as my proxy to vote for the election and reelection of board directors only on my behalf ~~and to act on my behalf on any and all business that come~~ before the Annual Meeting to be held on _____, (place date of meeting here) and at any and all adjournments in connection with this meeting, in accordance with the percentage interest owned in the common elements that the undersigned owner would be entitled to vote if then personally present, hereby revoking any proxy or proxies heretofore given, and ratifying and confirming all that my agent by virtue may do hereof. The undersigned also hereby acknowledges receipt of notice of said meeting.

~~* If you have named the board of directors as proxy holders above, check here if you wish the vote to be shared with each Board member receiving an equal share. If you leave this box unmarked then your vote will be cast as decided by the preference of the majority of the board.~~

II. Annual audit reports

Check one box indicating the type of annual audit report you wish to receive. The condominium law requires the board to make a copy of the annual audit available to each condominium apartment owner thirty days prior to the date of the annual meeting. The board is not required to make the report available to a condominium owner if this section is not marked.

- Summary of the annual audit report
- Unabridged copy of the annual audit report.

III. Procedures for a valid proxy

This proxy is valid only for the annual meeting noted in this Proxy and at all adjournments thereof. It may be revoked prior to its exercise. Should you attend the meeting, you may cancel the proxy and you may then vote in person. **TO BE VALID, THIS PROXY MUST:**

- be delivered to the managing agent or the association secretary no later than 4:30 p.m. on _____ (Place deadline date here. The deadline date is the second business day prior to the date of the meeting).

-
- provide the proxy giver's printed name and signature, apartment number; the printed name of the proxy holder, and date the proxy is given.

IV. Names and signatures

The name signed and printed on this proxy must be as the name appears on the record title of condominium ownership.

Those persons and entities signing for the owner of the apartment, such as executors, administrators, trustee, guardians, conservators, corporate officers and partners must submit to the Association, prior to the meeting, a copy of their appointment or other documentation verifying their authority to act in such capacity. **All of the blanks including the following blanks must be completed as indicated or the proxy will be void.**

PRINTED NAME OF OWNER:

SIGNATURE OF OWNER:

OWNER'S APARTMENT NO. _____

DATE SIGNED: _____

Appendix 9

Sample Proxy

Note: May be used to elect a general proxy or a directed proxy.

(PRINT or TYPE name of association of apartment owners here)

PROXY

I. Choice of proxy given (check one)

I hereby give a _____ general proxy or a _____ directed proxy as follows.

II. Designation of proxy holder

I, the undersigned owner do hereby constitute and appoint **CHECK ONE BOX**

The board of directors of the above named Association of Apartment

If you have checked this box you must complete the * provision below.

OR

(If this box is checked, print the name of the proxy holder)

as my proxy to vote for the election and reelection of board directors on my behalf and to act on my behalf on any and all business that come before the Annual Meeting to be held on _____, (place date of meeting here) and at any and all adjournments in connection with this meeting, in accordance with the percentage interest owned in the common elements that the undersigned owner would be entitled to vote if then personally present, hereby revoking any proxy or proxies heretofore given, and ratifying and confirming all that my agent by virtue may do hereof. The undersigned also hereby acknowledges receipt of notice of said meeting.

* If you have named the board of directors as proxy holders above, check here if you wish the vote to be shared with each Board member receiving an equal share. If you leave this box unmarked then your vote will be cast as decided by the preference of the majority of the board.

II. Annual audit reports

Check one box indicating the type of annual audit report you wish to receive. The condominium law requires the board to make a copy of the annual audit available to each condominium apartment owner thirty days prior to the date of the annual meeting. The board is not required to make the report available to a condominium owner if this section is not marked.

-
- Summary of the annual audit report
 - Unabridged copy of the annual audit report.

III. Procedures for a valid proxy

This proxy is valid only for the annual meeting noted in this Proxy and at all adjournments thereof. It may be revoked prior to its exercise. Should you attend the meeting, you may cancel the proxy and you may then vote in person. **TO BE VALID, THIS PROXY MUST:**

- **be delivered to the managing agent or the association secretary no later than 4:30 p.m. on _____ (Place deadline date here. The deadline date is the second business day prior to the date of the meeting).**
- **provide the proxy giver's printed name and signature, apartment number, the printed name of the proxy holder, and date the proxy is given.**

IV. Names and signatures

The name signed and printed on this proxy must be as the name appears on the record title of condominium ownership.

Those persons and entities signing for the owner of the apartment, such as executors, administrators, trustee, guardians, conservators, corporate officers and partners must submit to the Association, prior to the meeting, a copy of their appointment or other documentation verifying their authority to act in such capacity. **All of the blanks including the following blanks must be completed as indicated or the proxy will be void.**

PRINTED NAME OF OWNER:

SIGNATURE OF OWNER:

OWNER'S APARTMENT NO. _____

DATE SIGNED: _____

Appendix 10

Sample Proxy

Note: May be used in giving a directed proxy to the board of directors.

(PRINT or TYPE name of association of apartment owners here)

PROXY

I. Choice of proxy given (check one)

I hereby give a _____ general proxy or a _____ directed proxy as follows.

II. Designation of proxy holder

I, the undersigned owner do hereby constitute and appoint CHECK ONE BOX

- The board of directors of the above named Association of Apartment

If you have checked this box you must complete the * provision below.

OR

- _____
Any person (If this box is checked, print the name of the proxy holder)

as my proxy to vote for transaction of any and all business that come before the meeting to act on my behalf at the Annual Meeting to be held on _____, (place date of meeting here) and at any and all adjournments in connection with this meeting, **EXCEPT FOR THE ITEMS LISTED IN SECTION V FOLLOWING, I INSTRUCT THE PROXY HOLDER TO VOTE AS I HAVE INSTRUCTED IN THAT SECTION**, in accordance with the percentage interest owned in the common elements that the undersigned owner would be entitled to vote if then personally present, hereby revoking any proxy or proxies heretofore given, and ratifying and confirming all that my agent by virtue may do hereof. The undersigned also hereby acknowledges receipt of notice of said meeting.

- * If you have named the board of directors as proxy holders above, check here if you wish the vote to be shared with each Board member receiving an equal share. If you leave this box unmarked then your vote will be cast as decided by the preference of the majority of the board.

III. Annual audit reports

Check one box indicating the type of annual audit report you wish to receive. The condominium law requires the board to make available a copy of the annual audit to each condominium apartment owner thirty days prior to the date of the annual meeting. The board is not required to make the report available to a condominium owner you if this section is not marked.

- Summary of the annual audit report
- Unabridged copy of the annual audit report.

IV. Procedures for a valid proxy

This proxy is valid only for the annual meeting noted in this Proxy and at all adjournments thereof. It may be revoked prior to its exercise. Should you attend the meeting, you may cancel the proxy and you may then vote in person. **TO BE VALID, THIS PROXY MUST:**

- **be delivered to the managing agent or the association secretary no later than 4:30 p.m. on _____ (Place deadline date here. The deadline date is the second business day prior to the date of the meeting).**
- **provide the proxy giver's printed name and signature, apartment number, the printed name of the proxy holder, and date the proxy is given.**

V. Election of board directors

I expressly direct that the proxy holder cast my vote for the following candidates:

Candidate 1 Candidate 2 Candidate 3

On all other matters, I authorize the proxy holder to use his or her discretion to vote of those matters as she or he deems appropriate.

VI. Names and signatures

The name signed and printed on this proxy must be as the name appears on the record title of condominium ownership.

Those persons and entities signing for the owner of the apartment, such as executors, administrators, trustee, guardians, conservators, corporate officers and partners must submit to the Association, prior to the meeting, a copy of their appointment or other documentation verifying their authority to act in such capacity. **All of the blanks including the following blanks must be completed as indicated or the proxy will be void.**

PRINTED NAME OF OWNER:

SIGNATURE OF OWNER:

OWNER'S APARTMENT NO. _____

DATE SIGNED: _____

Appendix 11

Sample Proxy

Note: May be used to appoint a successor proxy holder.

(PRINT or TYPE name of association of apartment owners here)

PROXY

I. Choice of proxy given (check one)

I hereby give a _____ general proxy or a _____ directed proxy as follows.

II. Designation of proxy holder

I, the undersigned owner do hereby constitute and appoint CHECK ONE BOX

- The board of directors of the above named Association of Apartment

If you have checked this box you must complete the * provision below.

OR

- _____
Any person (If this box is checked, print the name of the proxy holder)

as my proxy to vote for transaction of any and all business that come before the meeting to act on my behalf at the Annual Meeting to be held on _____, (place date of meeting here) and at any and all adjournments in connection with this meeting, EXCEPT FOR THE ITEMS LISTED IN SECTION V FOLLOWING, I INSTRUCT THE PROXY HOLDER TO VOTE AS I HAVE INSTRUCTED IN THAT SECTION FOLLOWING, in accordance with the percentage interest owned in the common elements that the undersigned owner would be entitled to vote if then personally present, hereby revoking any proxy or proxies heretofore given, and ratifying and confirming all that my agent by virtue may do hereof. The undersigned also hereby acknowledges receipt of notice of said meeting.

- * If you have named the board of directors as proxy holders above, check here if you wish the vote to be shared with each Board member receiving an equal share. If you leave this box unmarked then your vote will be cast as decided by the preference of the majority of the board.

III. Annual audit reports

Check one box indicating the type of annual audit report you wish to receive. The condominium law requires the board to make available a copy of the annual audit to each condominium apartment owner thirty days prior to the date of the annual meeting. The board is not required to make the report available to a condominium owner you if this section is not marked.

- Summary of the annual audit report
- Unabridged copy of the annual audit report.

IV. Procedures for a valid proxy

This proxy is valid only for the annual meeting noted in this Proxy and at all adjournments thereof. It may be revoked prior to its exercise. Should you attend the meeting, you may cancel the proxy and you may then vote in person. TO BE VALID, THIS PROXY MUST:

- be delivered to the managing agent or the association secretary no later than 4:30 p.m. on _____ (Place deadline date here. The deadline date is the second business day prior to the date of the meeting).
- provide the proxy giver's printed name and signature, apartment number; the printed name of the proxy holder, and date the proxy is given.

V. Election of board directors

I expressly direct that the proxy holder cast my vote for the following candidates:

Candidate 1 Candidate 2 Candidate 3

On all other matters, I authorize the proxy holder to use his or her discretion to vote of those matters as she or he deems appropriate.

VI. Appointment of a Successor Proxy Holder

In the event, for whatever reason, my proxy designate is unable to be present at the meeting for which this proxy has been given, I hereby appoint the board of directors as the successor proxy holder. Each board member is to share equally in the vote. (**Other options:** I hereby appoint _____, [the name of another individual] as the successor. I hereby revoke my proxy. I hereby limit my proxy for quorum purposes only.)

VII. Names and signatures

The name signed and printed on this proxy must be as the name appears on the record title of condominium ownership.

Those persons and entities signing for the owner of the apartment, such as executors, administrators, trustee, guardians, conservators, corporate officers and partners must submit to the Association, prior to the meeting, a copy of their appointment or other documentation verifying their authority to act in such capacity. All of the blanks including the following blanks must be completed as indicated or the proxy will be void.

PRINTED NAME OF OWNER:

SIGNATURE OF OWNER:

OWNER'S APARTMENT NO. _____

DATE SIGNED: _____

Appendix 12

Note: Corporate owners must attach a board resolution appointing a corporate officer as the designated person to vote at association meetings or to designate another individual as proxy.

Sample Certificate of Election

Although not required by law, the board of directors, may consider appointing a joint committee of election inspectors. This committee could collect, verify, and count the votes cast (including proxy votes) at association meetings. Representatives on this committee should be objective and neutral, chosen from the board as well as owners. This procedure may minimize the claim by dissident owners that the elections may be unfairly stacked in favor of the reelection of old board members and their positions.

CERTIFICATE OF ELECTION ANNUAL MEETING OF

(INSERT the name of association of apartment owners)

We, the undersigned, certify that we inspected the proxies and ballots cast, inspected the voting process (including the owners' check-in lists) and tally of ballots and that the voting results were as follows:

Nominees

Number of Votes Received

Signature of Inspector

Name of Inspector (Please Print)

Signature of Inspector

Name of Inspector (Please Print)

Signature of Inspector

Name of Inspector (Please Print)

Signature of Tally Clerk

Name of Tally Clerk (Please Print)

Signature of Tally Clerk

Name of Tally Clerk (Please Print)

Attested By:

Chair of Joint Election Committee

Appendix B

§514A-82 Contents of bylaws. (a) The bylaws shall provide for at least the following:

- (1) Board of directors:
 - (A) The election of a board of directors;
 - (B) The number of persons constituting the board; provided that condominiums with more than one hundred individual apartment units shall have an elected board of not less than nine members unless not less than sixty-five per cent of all apartment owners vote by mail ballot, or at a special or annual meeting, to reduce the minimum number of directors;
 - (C) That for the initial term of office, directors shall serve for a term of three years or the term as specified by the bylaws or until their successors have been elected or appointed;
 - (D) The powers and duties of the board;
 - (E) The compensation, if any, of the directors; and
 - (F) Whether or not the board may engage the services of a manager or managing agent, or both, and specifying which of the powers and duties granted to the board by this chapter or otherwise may be delegated by the board to either or both of them.
- (2) Method of calling meetings of the apartment owners; what percentage, if other than a majority of apartment owners, constitutes a quorum; what percentage is, consistent with this chapter, necessary to adopt decisions binding on all apartment owners and that votes allocated to any area which constitutes a common element under section 514A-13(h) shall not be cast at any association meeting, whether or not it is so designated in the declaration.
- (3) Election of a president from among the board of directors who shall preside over the meetings of the board of directors and of the association of apartment owners.
- (4) Election of a secretary who shall keep the minute book wherein resolutions shall be recorded.
- (5) Election of a treasurer who shall keep the financial records and books of account.
- (6) Operation of the property, payment of the common expenses, and determination and collection of the common charges.
- (7) Manner of collecting common expenses, expenses, costs, and fees recoverable by the association under section 514A-94, and any penalties and late charges.
- (8) Designation and removal of personnel necessary for the maintenance, repair, and replacement of the common elements.
- (9) Method of adopting and amending administrative rules governing the details of the operation and use of the common elements.
- (10) The restrictions on and requirements respecting the use and maintenance of the apartments and the use of the common elements, not set forth in the declaration, as are designed to prevent unreasonable interference with the use of their respective apartments and of the common elements by the several apartment owners.

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- (11) The first meeting of the association of apartment owners shall be held not later than one hundred eighty days after recordation of the first apartment conveyance; provided forty per cent or more of the project has been sold and recorded. If forty per cent of the project is not sold and recorded at the end of one year, an annual meeting shall be called; provided ten per cent of the apartment owners so request.
 - (12) All members of the board of directors shall be owners, co-owners, vendees under an agreement of sale, or an officer of any corporate owner of an apartment. The partners in a general partnership and the general partners of a limited partnership shall be deemed to be the owners of an apartment for this purpose. There shall not be more than one representative on the board of directors from any one apartment.
 - (13) A director shall not cast any proxy vote at any board meeting, nor shall a director vote at any board meeting on any issue in which the director has a conflict of interest.
 - (14) No resident manager of a condominium shall serve on its board of directors.
 - (15) The board of directors shall meet at least once a year.
 - (16) All association and board of directors meetings shall be conducted in accordance with the most current edition of Robert's Rules of Order.
 - (17) All meetings of the association of apartment owners shall be held at the address of the condominium project, or elsewhere within the State as determined by the board of directors.
 - (18) Penalties chargeable against persons for violation of the covenants, conditions, or restrictions set forth in the declaration, or of the bylaws and administrative rules adopted pursuant thereto, method of determination of violations, and manner of enforcing penalties, if any.
- (b) In addition to the requirements of subsection (a), the bylaws shall provide for:
- (1) The method of removal from office of directors; that at any regular or special meeting of the apartment owners, any one or more members of the board of directors may be removed by the apartment owners and successors shall then and there be elected for the remainder of the term to fill the vacancies thus created. The removal and replacement shall be in accordance with all applicable requirements and procedures in the bylaws for the removal and replacement of directors, including, but not limited to, any provisions relating to cumulative voting. If removal and replacement is to occur at a special association meeting, the call for the meeting shall be by the president or by a petition to the secretary or managing agent signed by not less than twenty-five per cent of the apartment owners as shown in the association's record of ownership; and provided further that if the secretary or managing agent shall fail to send out the notices for the special meeting within fourteen days of receipt of the petition, then the petitioners shall have the authority to set the time, date, and place for the special meeting and to send out the notices for the special meeting in accordance with the requirements of the bylaws. Except as otherwise provided herein, the meeting for the removal and replacement from office of directors shall be scheduled, noticed, and conducted in accordance with the bylaws of the association.

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- (2) The bylaws may be amended at any time by the vote or written consent of sixty-five per cent of all apartment owners; provided that each one of the particulars set forth in this section shall be embodied in the bylaws always; and provided further that any proposed bylaws with the rationale for the proposal may be submitted by the board of directors or by a volunteer apartment owners' committee. If submitted by that committee, it shall be accompanied by a petition signed by not less than twenty-five per cent of the apartment owners as shown in the association's record of ownership. The proposed bylaws, rationale, and ballots for voting on any proposed bylaw shall be mailed by the board of directors to the owners at the expense of the association for vote or written consent without change within thirty days of the receipt of the petition by the board of directors. The vote or written consent required to adopt the proposed bylaw shall not be less than sixty-five per cent of all apartment owners; provided that the vote or written consent must be obtained within one hundred twenty days after mailing. In the event that the bylaw is duly adopted, then the board shall cause the bylaw amendment to be recorded in the bureau of conveyances or filed in the land court, as the case may be. The volunteer apartment owners' committee shall be precluded from submitting a petition for a proposed bylaw that is substantially similar to that which has been previously mailed to the owners within one year after the original petition was submitted to the board. This subsection shall not preclude any apartment owner or voluntary apartment owners' committee from proposing any bylaw amendment at any annual association meeting.
- (3) Notices of association meetings, whether annual or special, shall be sent to each member of the association of apartment owners at least fourteen days prior to the meeting, and shall contain at least: the date, time, and place of the meeting, the items on the agenda for the meeting, and a standard proxy form authorized by the association, if any.
- (4) No resident manager or managing agent shall solicit, for use by the manager or managing agent, any proxies from any apartment owner of the association of owners that employs the resident manager or managing agent, nor shall the resident manager or managing agent cast any proxy vote at any association meeting except for the purpose of establishing a quorum. No member of a board of directors who uses association funds to solicit proxies shall cast any of these proxy votes for the election or reelection of board members at any association meeting unless the proxy form specifically authorizes the board member to vote for the election or reelection of board directors and the board first posts notice of its intent to solicit proxies in prominent locations within the project at least thirty days prior to its solicitation of proxies; provided that if the board receives within seven days of the posted notice a request by any owner for use of association funds to solicit proxies accompanied by a statement, the board shall mail to all owners either:
- (A) A proxy form containing the names of all owners who have requested the use of association funds for soliciting proxies accompanied by their statements; or

(B) A proxy form containing no names, but accompanied by a list of names of all owners who have requested the use of association funds for soliciting proxies and their statements.

The statement shall not exceed one hundred words, indicating the owner's qualifications to serve on the board and reasons for wanting to receive proxies.

- (5) A director who has a conflict of interest on any issue before the board shall disclose the nature of the conflict of interest prior to a vote on that issue at the board meeting, and the minutes of the meeting shall record the fact that a disclosure was made.
- (6) The apartment owners shall have the irrevocable right, to be exercised by the board of directors, to have access to each apartment from time to time during reasonable hours as may be necessary for the operation of the property or for making emergency repairs therein necessary to prevent damage to the common elements or to another apartment or apartments.
- (7) An owner shall not act as an officer of an association and an employee of the managing agent employed by the association.
- (8) An association's employees shall not engage in selling or renting apartments in the condominium in which they are employed except association-owned units, unless such activity is approved by an affirmative vote of sixty-five per cent of the membership.
- (9) The board of directors shall meet at least once a year. Whenever practicable, notice of all board meetings shall be posted by the resident manager or a member of the board in prominent locations within the project seventy-two hours prior to the meeting or simultaneously with notice to the board of directors.
- (10) Directors shall not expend association funds for their travel, directors' fees, and per diem, unless owners are informed and a majority approve of these expenses.
- (11) Associations at their own expense shall provide all board members with a current copy of the association's declaration, bylaws, house rules, and, annually, a copy of this chapter with amendments.
- (12) The directors may expend association funds, which shall not be deemed to be compensation to the directors, to educate and train themselves in subject areas directly related to their duties and responsibilities as directors; provided that the approved annual operating budget include these expenses as separate line items. These expenses may include registration fees, books, videos, tapes, other educational materials, and economy travel expenses. Except for economy travel expenses within the State, all other travel expenses incurred under this subsection shall be subject to the requirements of subsection 514A-82(b)(10).

The provisions of this subsection shall be deemed incorporated into the bylaws of all condominium projects existing as of January 1, 1988, and all condominium projects created after that date.

§514A-83.2 Proxies. (a) A proxy, to be valid, must be delivered to the secretary of the association of apartment owners or the managing agent, if any, no later than 4:30 p.m. on the second business day prior to the date of the meeting to which it pertains, and must contain at least: the name of the association of apartment owners, the date of the meeting of the association of apartment owners, the printed name and signature of the person or persons giving the proxy, the apartment or apartments for which the proxy is given, the printed name of the person or entity to whom the proxy is given, and the date that the proxy is given.

(b) A proxy shall only be valid for the meeting to which the proxy pertains and its adjournments, may designate any person as proxy, and may be limited as the apartment owner desires and indicates; provided that no proxy shall be irrevocable unless coupled with a financial interest in the unit.

(c) Proxies may be given to the board of directors; provided that the proxy form shall contain a box wherein the owner may indicate that the owner wishes the vote to be shared with each board member receiving an equal percentage. Proxy forms which are not marked shall be considered a choice by the owner that the vote be made on the basis of the preference of the majority of the board.

(d) No officer of a board of directors shall use association funds to solicit proxies; provided that this shall not prevent an officer from exercising the officer's right as an apartment owner under section 514A-82(b)(4).

(e) Nothing in this section shall affect the holder of any proxy under a first mortgage of record encumbering an apartment or under an agreement of sale affecting an apartment.

§514A-96 Board of directors, audits, audited financial statement, transmittal. (a) The association of apartment owners shall require an annual audit of the association financial accounts and no less than one annual unannounced verification of the association's cash balance by a public accountant; provided that if the association is comprised of less than twenty owners, the annual audit and the annual unannounced cash balance verification may be waived by a majority vote of all apartment owners taken at an association meeting.

(b) The board of directors of the association shall make available a copy of the annual audit to each apartment owner at least thirty days prior to the annual meeting which follows the end of the fiscal year. The board shall provide upon all official proxy forms a box wherein the owner may indicate that the owner wishes to obtain either a summary of the annual audit report, or an unabridged copy of the annual audit report. The board shall not be required to submit a summary of the annual audit report or a copy of the annual audit report to the owner if the proxy form is not marked. If the annual audit has not been completed by that date, the board shall make available:

- (1) An unaudited year end financial statement for the fiscal year to each apartment owner at least thirty days prior to the annual meeting; and
- (2) The annual audit to all owners at the annual meeting, or as soon as the audit is completed, whichever occurs later.

If the association fiscal year ends less than two months prior to the convening of the annual meeting, the year to date unaudited financial statement may cover the period from the beginning of the association's fiscal year to the end of the month preceding the date on which notice of the annual meeting is mailed.

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The "author-date" form of citation has been utilized in this publication and consists of the author's last name, year of publication of the work and specific page, section or other element of the cited work (e.g., Jones 1999, 125), "Author" means the name under which the work is alphabetized in this bibliography. Source consulted: The Chicago Manual of Style, 14th ed. 1993, (The University of Chicago Press, Chicago, Illinois).

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