
A BILL FOR AN ACT

RELATING TO CONDOMINIUMS.

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

1 SECTION 1. Chapter 514B, Hawaii Revised Statutes, is
2 amended by adding five new sections to part VI to be
3 appropriately designated and to read as follows:

4 "§514B-A Condominium association managers. (a) Except as
5 stated in subsection (b), every condominium association manager
6 shall be certified, pursuant to section 514B-B, and no managing
7 agent shall employ or retain any person as a condominium
8 association manager unless the condominium association manager
9 has been certified. Within fourteen days after a managing agent
10 employs a person as a condominium association manager, the
11 managing agent shall register the condominium association
12 manager with the commission and submit evidence that the
13 condominium association manager is certified and in compliance
14 with any rules of the commission.

15 (b) Any person, who on the effective date of this Act:

16 (1) Has been assisting a managing agent or condominium
17 association in managing the operation of the property
18 for at least two years prior to that date; or



1 (2) Holds a designation or educational qualification that
2 the commission has approved for an exemption from
3 certification,
4 shall be deemed certified.

5 (c) Every condominium association manager shall be
6 considered a fiduciary with respect to any property managed by
7 that condominium association manager.

8 §514B-B Certificates; prerequisites. Every applicant for
9 a condominium manager certificate under this chapter shall file
10 an application and fee with the commission in a form and setting
11 forth the information as may be prescribed or required by the
12 commission. Every application shall be sworn to before an
13 officer authorized to administer oaths. No certificate shall be
14 issued unless the applicant has demonstrated that the applicant
15 has a reasonable knowledge of condominium law and condominium
16 operations and management, by passing, with a grade satisfactory
17 to the commission, an examination appropriate to the certificate
18 sought. The commission may contract with a professional,
19 independent testing service to prepare, administer, and grade
20 the examination of applicants as may be required for the
21 purposes of this chapter. The examination test shall be

1 approved by the commission and the examination shall be
2 conducted under rules adopted by the commission.

3 **§514B-C Examination; fee.** Every applicant for a
4 condominium manager certificate examination shall file an
5 application with either the real estate commission or the
6 testing service agency designated by the real estate commission
7 pursuant to rules of the commission to provide the testing
8 service. The application shall be in a form prescribed by the
9 commission and shall include a certification statement that the
10 applicant has fulfilled, or will fulfill by the date of the
11 examination, the prerequisites for written examination. Every
12 application shall be accompanied by an examination fee pursuant
13 to section 514B-E.

14 **§514B-D Form of certificates.** The form of every
15 certificate shall be prescribed by the real estate commission,
16 and shall be issued in the name of the commission and signed by
17 the chairperson or a member of the commission.

18 **§514B-E Fees.** All fees for applications, examinations,
19 and certificates prescribed by this chapter shall be as
20 determined by the commission by rules adopted pursuant to
21 chapter 91 and shall be deposited to the credit of the
22 condominium management education fund."



1 SECTION 2. Section 514B-3, Hawaii Revised Statutes, is
2 amended as follows:

3 1. By adding two new definitions to be appropriately
4 inserted to read:

5 "Certified" means any person who has passed an examination
6 approved by the commission that demonstrates the person's basic
7 knowledge of the operation of the property of an association of
8 apartment owners.

9 "Condominium association manager" means any person employed
10 or retained by a managing agent for the purposes of managing the
11 operation of the property."

12 2. By amending the definition of "operation of the
13 property" to read:

14 "Operation of the property" means [the administration,
15 fiscal management, and physical operation of the property, and
16 includes the maintenance, repair, and replacement of, and the
17 making of any additions and improvements to, the common
18 elements.] overseeing and authorizing payments for primary
19 association services or advising and providing administrative,
20 operational, and managerial counsel to the association's board
21 of directors as part of regular and routine job duties,
22 including: developing budgets; presenting and explaining



1 financial reports; soliciting and evaluating bids for work to be
2 performed; routinely performing site inspections; supervising or
3 directing association personnel; directing the enforcement of
4 the restrictive covenants; supervising the design and delivery
5 of recreational programs; soliciting bids, evaluating, and
6 assisting in the purchase of insurance; and supervising
7 maintenance activities and contractor performance."

8 SECTION 3. Section 514B-132, Hawaii Revised Statutes, is
9 amended by amending subsection (a) to read as follows:

10 "(a) Every managing agent shall:

11 (1) Be a:

12 (A) Licensed real estate broker in compliance with
13 chapter 467 and the rules of the commission.

14 With respect to any requirement for a corporate
15 managing agent in any declaration or bylaws
16 recorded before July 1, 2006, any managing agent
17 organized as a limited liability company shall be
18 deemed to be organized as a corporation for the
19 purposes of this paragraph, unless the
20 declaration or bylaws are expressly amended after
21 July 1, 2006 to require that the managing agent



1 be organized as a corporation and not as a
2 limited liability company; or
3 (B) Corporation authorized to do business under
4 article 8 of chapter 412;
5 (2) Register with the commission prior to conducting
6 managing agent activity through approval of a
7 completed registration application, payment of fees,
8 and submission of any other additional information set
9 forth by the commission. The registration application
10 and each renewal shall include the names and addresses
11 of any condominium association managers employed by
12 the managing agents. The registration shall be for a
13 biennial period with termination on December 31 of an
14 even-numbered year. The commission shall prescribe a
15 deadline date prior to the termination date for the
16 submission of a completed reregistration application,
17 payment of fees, and any other additional information
18 set forth by the commission. Any managing agent who
19 has not met the submission requirements by the
20 deadline date shall be considered a new applicant for
21 registration and subject to initial registration
22 requirements. The information required to be

1 submitted with any application shall include the name,
2 business address, phone number, and names of
3 associations managed;

4 (3) Obtain and keep current a fidelity bond in an amount
5 equal to \$500 multiplied by the aggregate number of
6 units of the association managed by the managing
7 agent; provided that the amount of the fidelity bond
8 shall not be less than \$20,000 nor greater than
9 \$500,000. Upon request by the commission, the
10 managing agent shall provide evidence of a current
11 fidelity bond or a certification statement from an
12 insurance company authorized by the insurance division
13 of the department of commerce and consumer affairs
14 certifying that the fidelity bond is in effect and
15 meets the requirements of this section and the rules
16 adopted by the commission. The managing agent shall
17 permit only employees covered by the fidelity bond to
18 handle or have custody or control of any association
19 funds, except any principals of the managing agent
20 that cannot be covered by the fidelity bond. The
21 fidelity bond shall protect the managing agent against
22 the loss of any association's moneys, securities, or



1 other properties caused by the fraudulent or dishonest
2 acts of employees of the managing agent. Failure to
3 obtain or maintain a fidelity bond in compliance with
4 this chapter and the rules adopted pursuant thereto,
5 including failure to provide evidence of the fidelity
6 bond coverage in a timely manner to the commission,
7 shall result in nonregistration or the automatic
8 termination of the registration, unless an approved
9 exemption or a bond alternative is presently
10 maintained. A managing agent who is unable to obtain
11 a fidelity bond may seek an exemption from the
12 fidelity bond requirement from the commission;

13 (4) Act promptly and diligently to recover from the
14 fidelity bond, if the fraud or dishonesty of the
15 managing agent's employees causes a loss to an
16 association, and apply the fidelity bond proceeds, if
17 any, to reduce the association's loss. If more than
18 one association suffers a loss, the managing agent
19 shall divide the proceeds among the associations in
20 proportion to each association's loss. An association
21 may request a court order requiring the managing agent
22 to act promptly and diligently to recover from the



1 fidelity bond. If an association cannot recover its
2 loss from the fidelity bond proceeds of the managing
3 agent, the association may recover by court order from
4 the real estate recovery fund established under
5 section 467-16, provided that:

6 (A) The loss is caused by the fraud,
7 misrepresentation, or deceit of the managing
8 agent or its employees;

9 (B) The managing agent is a licensed real estate
10 broker; and

11 (C) The association fulfills the requirements of
12 sections 467-16 and 467-18 and any applicable
13 rules of the commission;

14 (5) Pay a nonrefundable application fee and, upon
15 approval, an initial registration fee, and
16 subsequently pay a reregistration fee, as prescribed
17 by rules adopted by the director of commerce and
18 consumer affairs pursuant to chapter 91. A compliance
19 resolution fee shall also be paid pursuant to section
20 26-9(o) and the rules adopted pursuant thereto; and

21 (6) Report immediately in writing to the commission any
22 changes to the information contained on the



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1 registration application or any other documents
2 provided for registration. Failure to do so may
3 result in termination of registration and subject the
4 managing agent to initial registration requirements."

5 SECTION 4. In codifying the new sections added by section
6 1 of this Act, the revisor of statutes shall substitute
7 appropriate section numbers for the letters used in designating
8 the new sections in this Act.

9 SECTION 5. Statutory material to be repealed is bracketed
10 and stricken. New statutory material is underscored.

11 SECTION 6. This Act shall take effect on July 1, 2006.

12

INTRODUCED BY: OLY. 2 (BR)

JAN 24 2006

M.B.NO.2681

Report Title:

Condominiums; Managing Agent; Resident Manager; Certification

Description:

Sets forth a process for the certification of all condominium association managers.

